

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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SHIPOWNERS AND MERCHANTS TUGBOAT  
COMPANY, a Corporation, Claimant of The  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellant,

vs.

A. H. BULL & COMPANY, Inc., a Corporation,  
Appellee.

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**Apostles on Appeal.**

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Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

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FILED  
SEP 11 1918



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the Southern Division of the United States District Court, for the Northern District of California, First Division.*

IN ADMIRALTY—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS AND MERCHANTS TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Praeceptum for Apostles on Appeal.**

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal heretofore perfected in this court, and include in said transcript the following:

(1) All those papers, documents, and data required by Subparagraph (1) of Section 1 of Rule 4 of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit;

(2) All the pleadings in the cause with the exhibits annexed thereto;

(3) All the testimony and other proofs adduced in the cause, including the testimony taken at the trial, all depositions taken by either party, and ad-

mitted in evidence, and all exhibits introduced by either party, said exhibits to be sent up as original exhibits;

- (4) The interlocutory decree;
- (5) The stipulation as to damages entered into between the respective parties; [1\*]
- (6) The memorandum of conclusions filed by the Court in lieu of an opinion in the cause;
- (7) The final decree;
- (8) The notice of appeal;
- (9) The assignments of error;
- (10) All stipulations and orders extending time for printing the record and filing and docketing the cause on appeal.

McCUTCHEN, OLNEY & WILLARD,  
Proctors for Respondent and Claimant (Appel-  
lant).

Service of the within praecipe and receipt of a copy is hereby admitted this 22d day of June, 1918.

PILLSBURY, MADISON & SUTRO,  
Proctors for Libellant.

[Endorsed]: Filed Jun. 22, 1918. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

**Statement of Clerk U. S. District Court.**

**Parties.**

Libellant: A. H. BULL & COMPANY, INC.

Respondent: The American Steam Tug "FEAR-  
LESS," Her Engines, Boilers, Tackle, Ap-  
parel and Furniture.

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\*Page-number appearing at foot of page of original certified Apostles on Appeal.



Claimant: SHIPOWNERS & MERCHANTS  
TUGBOAT COMPANY, a Corporation.

Proctors for Libelant:

PILLSBURY, MADISON & SUTRO, San  
Francisco, California.

Respondent and Claimant:

IRA A. CAMPBELL, Esq., and McCUTCHEN,  
OLNEY & WILLARD, San Francisco,  
California.

PROCEEDINGS.

1916.

May 18. Filed Libel for damages in the sum of  
\$24,000.00

Issued Monition for the attachment of  
the Steam Tug "Fearless," which  
Monition was afterwards [3]  
on May 23d, 1916, returned and filed  
with the United States Marshal's  
Return of service endorsed thereon.

May 19. Filed Claim of Shipowners & Mer-  
chants Tugboat Company, a corpo-  
ration, to Steam Tug "Fearless."

Filed Stipulation (Bond) for the re-  
lease of the Steam Tug "Fearless,"  
in the sum of \$25,000.00.

July 13. Filed Answer.

1917.

May 24. Filed Depositions of Henry Mc-  
Donald and Sivert Hansen taken on  
behalf of Libelant.

June 5. This cause this day came on for hear-  
ing, the Honorable MAURICE T.

DOOLING, Judge, presiding.  
After hearing testimony, the cause was continued until June 6th for further trial.

6. This cause this day came on for further hearing and after hearing duly had, it was ordered submitted.
7. Filed two volumes of testimony.

1918.

February 8. The Court this day rendered an opinion in which it was ordered that a Decree be entered in favor of Libelant, and that the cause be referred to a United States Commissioner to ascertain and report the amount due.

13. Filed Interlocutory Decree.

March 25. Filed Stipulation of Proctors as to the amount of damage sustained by Libelant, to wit: \$21,747.96 and interest at the rate of six per cent from May 18, 1916. [4]

March 28. Filed Final Decree.

April 6. Filed Bond on Appeal.

8. Filed Notice of Appeal.

June 26. Filed Assignment of Errors. [5]



*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent.

**Libel of A. H. Bull & Company, Inc.**

To the Honorable MAURICE T. DOOLING, Judge  
of the District Court of the United States, in  
and for the Northern District of California,  
First Division.

The libel of A. H. Bull & Company, Inc., a corporation, owner of the steamship "Edith," against the American steam tug "Fearless," her boiler, engines, tackle, apparel and furniture, and against all persons lawfully intervening for their interests in said vessel, alleges as follows:

I.

That at all the times herein mentioned the libelant was and now is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and that at all said times libelant was and now is the sole owner of the steamship "Edith." [6]

## II.

That said steam tug "Fearless" at all the times herein mentioned was and now is owned by Shipowners and Merchants Tugboat Company, a corporation duly organized and existing under and by virtue of the laws of the State of California.

## III.

That on the 4th day of March, 1916, the said steamship "Edith" was docked on the northwesterly line of Pier 46 in the port of San Francisco, and on the southeasterly side of said slip between Pier 46 and Pier 44; that at said time, and at all the times herein mentioned, the Master of said steamship "Edith" was in charge of said steamship "Edith"; that while said steamship "Edith" was lying in said slip her Master engaged the services of the steam tug "Fearless" for the towing of the steamship "Edith" out of said slip and beyond said docks, so that said steamship "Edith" might thereupon proceed under her own steam to a drydock in the bay of San Francisco; that said tug "Fearless," after taking a seven inch tow-line from the port side of the stern of the steamship "Edith," proceeded so rapidly as to part said seven-inch line before the head-line with which the steamship "Edith" had been moored could be cast off, and the steamship "Edith" drifted across said slip to the northwesterly line of the southerly side of Pier 44; that thereupon said tug "Fearless" took another line from the steamship "Edith" on the starboard side of the stern of the steamship "Edith," and proceeded to tow the steamship "Edith" out of said slip; that thereupon [7] and

without a signal from the Master of the steamship "Edith," and without any signal or warning to the Master of the steamship "Edith" from the Captain of the tug "Fearless," the Captain of the tug "Fearless" caused said tow-line to be cast off; that a signal was at once given to the Master of the steamship "Edith" by the mate of the steamship "Edith," who was standing on the poop-deck, that the said line had been cast off by the Master of the tug "Fearless," and thereupon the Master of the steamship "Edith" forthwith stopped all engines of the "Edith" to prevent said line, which had been cast off by the Master of the "Fearless" as aforesaid, from fouling the propeller of the "Edith"; that a strong ebb-tide was running at the time, and a strong southeasterly wind was blowing, and the "Edith" began rapidly to drift, and while so drifting the Master of the "Fearless" steamed around the port side of the steamship "Edith" passing the steamship "Edith" and intending to take a port bow line and thus tow her ahead; that the Master of the "Fearless" was not prepared with a line and was unable to pass one to the "Edith" in passing her, though requested to do so by the first officer of the "Edith"; whereupon the first officer of the "Edith" passed to the "Fearless" the first line available, and which the exigencies of the situation into which the "Edith" had been put by the manoeuvre of the Master of the "Fearless" required him to seize; that the Master of the "Fearless" thereupon ran at an excessive rate of speed with said line and the same parted; that the steamship "Edith" thereupon crashed into Pier 32

in said Bay of [8] San Francisco and a number of her starboard plates were smashed, and the vessel otherwise damaged, so as to necessitate her being taken to a drydock for repairs.

## IV.

The collision of the steamship "Edith" with said Pier 32 was caused by the negligent management and manoeuvring of the tug "Fearless," and of the person or persons in charge of said vessel, in proceeding at an unusual rate of speed with the tow-lines taken from the steamship "Edith" and in dropping the second tow-line taken by said tug "Fearless" without notice to the Master of the "Edith," and in endeavoring to perform the act of towage by taking a stern line, dropping the same and then taking a bow line, all without notice or advice to the Master of the "Edith" of the proposed manoeuvre, and in proceeding at an undue rate of speed with the tow-line passed to the "Fearless" by the steamship "Edith," and in not having a tow-line ready to use in completing the manoeuvre in question; that the person or persons in charge of said steam tug "Fearless" were further negligent in attempting to perform said act of towage in the face of the strong wind that was blowing and the strong ebb-tide that was running; that said wind and tide conditions were known to the person or persons in charge of the said tug "Fearless"; that knowing said wind and tide conditions, said person or persons in charge of said tug "Fearless" carelessly and negligently attempted to tow said steamship "Edith" out of said slip in the manner hereinbefore described, and failed to properly notify the

Master of the steamship "Edith" of the proposed manoeuvre in that respect, [9] and by reason of such want of proper care and skill in navigation on the part of those in charge of the steamship "Edith," said steamship "Edith" was caused to and did collide with said Pier 32 and suffered the damages hereinbefore referred to; that said collision was in no way caused by any careless or negligent action of the Master of the steamship "Edith," or of any other person or persons on said steamship "Edith," or of the officers of the libelant.

## V.

That due to the damage herein mentioned, it was necessary for the steamship "Edith" to be placed in a drydock on the 6th day of March, as aforesaid, and to suffer repairs, the reasonable cost of which was Sixteen Thousand Six Hundred Sixty-six and 74/100 Dollars (\$16,666.74), and which could not be completed prior to the 16th day of March, 1916; that said steamship "Edith" was under a time charter at the time of the collision hereinbefore referred to, and the value of said steamship "Edith" to the said libelant at the time was Six Hundred Sixty-six and 66/100 Dollars (\$666.66) for each day; that by reason of the collision and damage to said steamship "Edith" hereinbefore referred to said steamship "Edith" remained in said drydock for eleven days, and during which time said steamship "Edith" was detained at the port of San Francisco at a loss to libelant of Seven Thousand Three Hundred Thirty-three and 26/100 (\$7,333.26); that the total damage to the libelant by reason of said collision was the sum



of Twenty-four Thousand Dollars (\$24,000). [10]

## VI.

That said steam tug "Fearless" is now lying within the boundaries of the Northern District of California at or near the port of San Francisco; that all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law in accordance with the course of practice of this Court in cases of admiralty and maritime jurisdiction issue against said steam tug "Fearless," her boiler, engines, tackle, apparel and furniture, and that all persons having or claiming any interest in said steam tug "Fearless" be cited to appear and answer the matters herein set forth; that said vessel be condemned and sold to satisfy the claim of libelant, with interest and costs, and that libelant may have such other and further relief as it may be entitled to receive in the premises.

PILLSBURY, MADISON & SUTRO,

Proctors for Libelant. [11]

State of California,

City and County of San Francisco,—ss.

Stewart S. Lowery, being first duly sworn, deposes and says: That he is secretary and treasurer of Willcox, Peck & Hughes; that said Willcox, Peck & Hughes are the agents of the A. H. Bull & Company, Inc., a corporation, the libelant named in the foregoing libel; that affiant makes this verification for and on behalf of said libelant, and knows the facts in said libel set forth upon his own investigation;

that said A. H. Bull & Company, Inc., has no officer within the State of California, and therefore affiant makes this verification on behalf of said libelant; that he has read said libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

STEWART S. LOWERY.

Subscribed and sworn to before me, this 12th day of May, 1916.

[Seal]

FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed May 18, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [12]

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*In the District Court of the United States of America, Northern District of California.*

IN ADMIRALTY—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
her Engines, Boilers, etc.

Respondent.

**Claim.**

To the Honorable Judges of the District Court of the United States for the Northern District of California:

The claim of Shipowners and Merchants Tugboat Company, a corporation organized and existing under and by virtue of the laws of the State of California to the American Steam Tug "Fearless," her tackle, apparel and furniture, now in the custody of the Marshal of the United States for the said Northern District of California, at the suit of A. H. Bull & Company, Inc., a corporation, alleges—

That it is the true and bona fide owner of the said American Steam Tug "Fearless," her tackle, apparel and furniture, and that no other person is owner thereof.

Wherefore, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to it, the said claimant and otherwise right and justice to administer in the premises.

\_\_\_\_\_ deposes and says that he was and is the master of said vessel, and that at the time of the said arrest thereof, he was in possession of the same as the lawful bailee thereof for the said owner, and that said owner reside out of the said Northern District of California, and more than one hundred miles from the city of San Francisco, in said district

SHIPOWNERS AND MERCHANTS TUG-  
BOAT COMPANY.

By JOHN W. CURRY,  
Its Secretary.

IRA A. CAMPBELL,  
McCUTCHEM, OLNEY & WILLARD,  
Proctors for Claimant.



Northern District of California,—ss.

Subscribed and sworn to before me this 19 day of  
May, A. D. 1916.

C. W. CALBREATH,  
Deputy Clerk, U. S. District Court, Northern Dis-  
trict of California.

[Endorsed]: Filed May 19, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [13]

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*In the United States District Court, in and for the  
Northern District of California, First Division.*

IN ADMIRALTY.—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS & MERCHANTS' TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Answer.**

To the Honorable, the Judges of the United States  
District Court for the Northern District of Cali-  
fornia:

The answer of the Shipowners and Merchants'  
Tugboat Company, a corporation, claimant herein,

to the libel of A. H. Bull & Company, Inc., a corporation, libelant herein, admits, denies and alleges as follows:

I.

Claimant admits the allegations of Article I of said libel.

II.

Claimant admits the allegations of Article II of said libel.

III.

Answering unto the allegations of Article III of said libel, claimant admits that on the 4th day of March, 1916, the steamship "Edith" was on the northwesterly line of pier 46, in the port of San Francisco, and on the southeasterly side of said slip between [14] pier 46 and pier 44; admits that at said time, and at all times herein mentioned, the master of said steamship "Edith" was in charge of said steamship "Edith"; denies that while said steamship "Edith" was lying in said slip her master engaged the services of the steam tug "Fearless" for the towing of the steamship "Edith" out of said slip and beyond said docks, so that said steamship "Edith" might thereupon proceed under her own steam to a drydock in the Bay of San Francisco, and in that behalf alleges the fact to be that the master of said steamship "Edith" engaged the services of the steam tug "Fearless" for the purpose of assisting said steamship "Edith" out of her berth at said pier 46, and into the Hunter Point drydock; denies that said tug "Fearless," after taking a 7-inch tow-line from the port side of the steamship "Edith," proceeded so

rapidly as to part said 7-inch line before the head-line with which said steamship "Edith" had been moored could be cast off, and, in that behalf, it admits, however, that upon said "Fearless" beginning to pull on said line taken from the port side of the stern of the "Edith" said line parted, and that, thereupon, said steamship "Edith" drifted across said slip to the northwesterly line of the southerly side of pier 44; admits that thereupon said tug "Fearless" took another line from the steamship "Edith" on the starboard side of the stern of the steamship "Edith," and proceeded to assist said steamship "Edith" out of said slip, but denies that she proceeded to tow the said steamship "Edith" out of said slip, for at all times said "Edith" was working her own engines; denies that thereupon and without a signal from the master of the said steamship "Edith," and without any signal or warning to the master of the steamship "Edith" from the captain of the tug "Fearless," the captain of the tug "Fearless" caused said tow-line to be cast off, [15] and, in that behalf, alleges the circumstances under which said tow-line was cast off to be as hereinafter set forth. Claimant admits that a signal was at once given to the master of the steamship "Edith" by the mate of said steamship, who was standing on the poop-deck, that the tow-line had been cast off by the master of the tug "Fearless," but is without knowledge as to whether or not the master of the steamship "Edith" thereupon and forthwith stopped all engines of the "Edith" to prevent said line, which had been cast off by the master

of the "Fearless," from fouling the propeller of the "Edith"; admits that a strong ebb-tide was running at the time, and a strong southeasterly wind was blowing, and that the "Edith" began rapidly to drift under her stopped propeller, and while so drifting that the master of the "Fearless" steamed around the port side of the steamship "Edith," passing the steamship "Edith" and intending to take a port bow-line, but denies that it was for the purpose of towing her ahead, and, in that behalf, alleges that said maneuver was as hereinafter set forth. Claimant denies that the master of the "Fearless" was not prepared with a line and was unable to pass one to the "Edith" in passing her, and denies that the first officer of the "Edith" requested said tug to pass such a line, except that it does admit that the first officer of said steamship asked said tug to pass a large 12-inch hawser lying on the stern of said tug, but that said hawser was so heavy that the men on the forecastle-head of said "Edith" would not have been able to have taken said hawser aboard, and it would not have been practicable to have passed said large hawser at the time, and that said hawser was not of the character of a towing line suitable for the purpose of performing the maneuver which said tug was about to undertake as hereinafter set forth; admits that the first officer of the "Edith" passed [16] a line to the "Fearless," but is without knowledge as to whether it was the first line available or which the exigencies of the situation required him to seize, but, in that behalf, denies that there were any exigencies of the situation into which the "Edith"

had been put by the master of the tug "Fearless" which required the first officer of said "Edith" to pass the insufficient line which he did; denies that the master of the "Fearless" thereupon ran at an excessive rate of speed with said line, but admits that said line parted admits that thereafter said steamship "Edith" drifted into pier 32 in said Bay of San Francisco. Claimant is without information as to whether or not a number of her starboard plates were smashed, or otherwise damaged, so as to necessitate the steamship being taken to a drydock for repairs. Except as herein expressly admitted, claimant denies each and every of the remaining allegations of said article.

#### IV.

Answering unto the allegations of Article V of said libel, claimant denies that the collision of the steamship "Edith" with said pier 32 was caused by the negligent management and maneuvering of the tug "Fearless," or of the person or persons in charge of said vessel in proceeding at an unusual rate of speed with the tow-lines taken from the steamship "Edith," or in dropping the second tow-line taken by said tug "Fearless" without notice to the master of the "Edith," or in maneuvering to perform the act of towage by taking a stern-line and dropping the same, and then taking a bow-line, or in proceeding at an undue rate of speed with the tow-line passed to the "Fearless" by the steamship "Edith," or in not having a tow-line ready to use in completing the maneuver in question, and further denies that said collision was in any respect whatsoever caused by



any negligent act in the management or navigation of said tug "Fearless," or of any of the persons in charge of said vessel. Claimant further denies that the alleged [17] maneuvers of said tug were without notice or advice to the master of the "Edith."

Claimant denies that the person or persons in charge of said steam tug "Fearless" were further negligent, or at all negligent, in attempting to perform the said act of towage in the face of the strong wind that was blowing and the strong ebbtide running, and, in that behalf, alleges that at the time the tug was ordered to assist said "Edith," the condition of wind, sea and tide were well known to the master of said steamship "Edith," and said tug was employed to assist said steamship under the conditions then and there existing. Claimant admits that said wind and tide conditions were known to the person or persons in charge of said tug "Fearless," and, in that behalf, alleges that they were equally well known to the master and officers of said steamship "Edith." Claimant denies that knowing said wind and tide conditions said person or persons in charge of said tug "Fearless" carelessly or negligently attempted to tow said steamer out of said slip in the manner thereinbefore in said libel described, or failed to properly notify the master of the steamship "Edith" of the proposed maneuver in that respect; denies that by reason of any want of proper care and skill in navigation, as alleged in said libel, or otherwise, or at all, on the part of the tug "Fearless," said steamship "Edith" was caused to and/or did collide with said pier 32, or suffered damages

thereinbefore in said libel referred to; denies that said collision was in no way caused by careless or negligent action of the master of the steamship "Edith," or of the officers of said steamship, and, in that behalf, alleges that said collision was solely caused by the negligent management, navigation and maneuvering of said steamship "Edith," and the failure to furnish sufficient and proper lines to said tug "Fearless." Except as herein expressly admitted, claimant denies each and every of the remaining allegations of said article. [18]

## V.

Answering unto the allegations of Article V of said libel, claimant is without information as to whether or not, due to the damages alleged in said libel to have been suffered by said steamship "Edith," it was necessary for said "Edith" to be placed in dry-dock on the 6th day of March, as in said libel alleged, or to suffer repairs the reasonable cost of which was \$16,666.74, or any sum whatsoever, and which could not be completed prior to the 16th day of March, 1916, and for that reason demands that strict proof of the allegations thereof be made if the same be material.

Claimant is without information as to whether or not said steamship "Edith" was under a time charter at the time of collision thereinbefore in said libel referred to, or whether the value of said steamship "Edith" to said libelant at the time was \$666.66 for each day, and for that reason demands that strict proof of each and every of the allegations thereof be made. Claimant is without information as to

whether or not, by reason of the collision and damage to said steamship "Edith" thereinbefore in said libel referred to, said steamship remained in said drydock for eleven (11) days, and is likewise without information as to whether or not, during said alleged time, said steamship "Edith" was detained at the port of San Francisco at a loss to libelant of \$7,333.26, or any sum whatsoever, and for that reason demands that strict proof of each and every of the allegations thereof be made if the same be material. Claimant is ignorant as to whether or not the total damage by reason of said collision was the sum of \$24,000, or any sum whatsoever, and for that reason demands that strict proof of each and every of the allegations therein be made if the [19] same be material. Except as herein expressly admitted, claimant denies each and every of the remaining allegations of said article.

#### VI.

Answering unto the allegations of Article VI of said libel, claimant admits that at the time of the filing of said libel said steam tug "Fearless" was lying within the boundaries of the Northern District of California at or near the port of San Francisco, and that all and singular the premises in said libel alleged were within the admiralty and maritime jurisdiction of the United States, but denies that all and singular the premises are true.

Further answering unto the allegations of said libel, claimant alleges:

#### I.

That on the 4th day of March, 1916, the master of said steamship "Edith" arranged for claimant to



send one of the tugs to assist said steamship that afternoon from its berth on the northerly side of pier 46 to and into Hunter's Point drydock; that at the time said arrangements were effected, strong wind was blowing from the southeast, creating a sea of considerable size on the bay; that thereafter claimant dispatched one of its best harbor tugs, namely the "Fearless," to so assist said steamship "Edith," and upon arriving at said steamship, the officers and crew of the latter passed from the port quarter of said steamship one of the latter's lines, which was made fast to the after towing bits of the "Fearless"; that, thereafter, as soon as said line was made fast on board said steamship, said tug began to pull on the same, and almost immediately thereafter said line, owing to its rotten condition and insufficient strength, parted, and said steamship "Edith" drifted, with the wind and ebbing tide, across the slip in which [20] she was berthed to the southerly side of pier 44; that a second line was thereupon passed from the starboard quarter of said steamship "Edith" to said tug, and as soon as the same was made fast on board said tug and said steamship, said tug began to pull upon said steamship and the latter at the same time worked her engines astern, the combined efforts gradually backing said steamship out of said slip; that after said steamship had been backed out of said slip and into the bay a sufficient distance to execute the next maneuver, to wit, approximately 700 feet distant from the end of pier 44, said steamship stopped backing her engines, and said tug, as was usual and customary in similar cases,

also stopped her engines and prepared to cast off said line; that the officer stationed on the poop-deck of said steamship thereupon directed his crew to take in said line, and at least one-half of the line that was out was so hauled in by said crew, when said steamship, with her helm to starboard, started her engines ahead, whereupon said line was cast off from said tug. That as soon as said line was let go from said tug, the latter was taken around to the bow of said steamship, and the officer stationed on the fore-castle-head of the latter was requested to pass a line to said tug in order that said tug might turn said steamship's head against the tide, sea and wind in the direction in which she was to proceed to said drydock; that for reasons unknown to claimant, the officer and crew of said steamship stationed forward failed to pass said line with required diligence, and during the delay in getting said line out said steamship drifted with the wind, sea and tide, passing the ends of piers 44, 42, 40, 38, 36 and 34, towards pier 32, which projected into the bay beyond the ends of the aforementioned piers; that when about opposite the end of pier 36, the officer and crew on the fore-castle-head of said steamship succeeded in passing a line to the said tug, and as soon [21] as it was made fast to the latter's towing bitts, said tug commenced to pull and almost immediately thereafter said line, owing to its rotten condition and insufficient strength, parted; that prior to the parting of said line, and as said steamship was drifting past the ends of said wharves toward pier 32, the master of said tug suggested to the

master of said steamship that he back his engines as it was apparent that owing to the delay of said crew in passing said line said steamship was drifting toward the extending end of pier 32; that the master of said steamship failed and refused, however, to act upon said suggestion, and did not start his engines until as hereinafter mentioned; that following the parting of said second hawser, and before a third hawser could be passed, said steamship "Edith" drifted down upon the corner of pier 32, and then swung around broadside across the end of said pier; that shortly before she struck said pier her engines were started astern, and, thereafter, as soon as she was broadside to said pier, the engines of said steamship were started ahead, and she thereupon proceeded without assistance, and under her own power to Hunter's Point drydock, where she was subsequently docked at 5:30 P. M.

## II.

That the existing conditions of wind, weather and tide were fully known to the master of said steamship at the time said tug came to his assistance as ordered, and said movements were in fact made at that time under the master's express orders and directions so that said steamship might reach, as soon as possible, said drydock to which she had been ordered for an earlier docking; that said steamship could only be moved out of said slip at practically right angles to the direction of the tidal currents and sea and wind, and to proceed on her way to Hunter's Point [22] drydock she had to be turned at right angles to the

course which she was forced to take in leaving said slip; that there was but one way in which this could be successfully done, and that was, as said tug attempted to perform said maneuver, and would have successfully accomplished it but for the slowness of the officers and crew of said steamship in passing said head-line and the rotten condition and insufficient strength of the same, by said tug proceeding to the bow of said steamship, taking a line therefrom, and then by said tug heading into said wind, sea and tide, swinging the bow of said steamship in the same direction.

That notwithstanding the slowness and inefficiency with which said line was passed from the bow of said steamship to said tug, during which period said steamship was drifting toward pier 32, as aforesaid, no reason existed why said steamship's engines could not have been worked astern, and said steamship kept away from pier 32 while said hawser was being passed to said tug ahead; that such was the suggestion, as aforesaid, made by the master of said tug to the master of said steamship, and the failure of the master of said steamship to so work his engines before he did was one of proximate causes of her subsequent collision with said pier 32.

That said collision was further caused and contributed to by the failure of said steamship to furnish said tug with sound and seaworthy lines with which to pull upon said steamship instead of the rotten and insufficient ones which were passed to said tug.

That furthermore said collision with said pier



could have been avoided by said steamship dropping her anchors, the opportunity for which was open and obvious to the master of said steamship. [23]

That said collision was not due to any fault or neglect on the part of said tug.

III.

That all and singular the premises are true.

WHEREFORE, claimant prays that the libel herein may be dismissed with costs, and that it may have such other and further relief as may be deemed meet and equitable in the premises.

IRA A. CAMPBELL &

McCUTCHEM, OLNEY & WILLARD,

Proctors for Claimant.

State of California,

City and county of San Francisco,—ss.

W. J. Gray, being first duly sworn, deposes and says:

That he is the vice-president and general manager of the Shipowners & Merchants Tugboat Company, a corporation, claimant herein; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

W. J. GRAY.

Subscribed and sworn to before me this 12th day of July, 1916.

[Seal]

FRANK L. OWEN.

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Receipt of a copy of Answer hereby admitted this 12th day of July, 1916. Pillsbury,

Madison & Sutro, Proctors for Libelant. Filed Jul. 13, 1916, W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [24]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 5<sup>th</sup> day of June, in the year of our Lord, one thousand, nine hundred and seventeen. Present: the Honorable MAURICE T. DOOLING, District Judge.

No. 16,031.

A. H. BULL & CO., INC.,

vs.

AM. STEAM TUG "FEARLESS," etc. et al.

**Minutes of Trial. Dated June 5, 1917.**

This cause came on regularly this day for the trial upon the issue joined herein. Oscar Sutro, Esq., appeared on behalf of libelant. Ira A. Campbell, Esq., appeared on behalf of claimant. Libelant introduced in evidence the depositions of Henry McDonald and Sivert Hansen; and rested. John Habacher, George W. Driver, Richard C. W. O. Kraatz, John Taylor, Charles F. Boster, W. M. Randall and W. J. Gray were sworn and testified on behalf of claimant herein, Shipowners & Merchants Tugboat Co. Said claimant introduced in evidence a certain exhibit, which was filed and marked Claimant's Exhibit "A" (Drawing), "B" (Chart of Waterfront). Thereupon the hour of adjournment having arrived, the

Court ordered that this cause be, and the same is hereby continued to June 6th, 1917, at 2 o'clock.  
[25]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 6th day of June, in the year of our Lord, one thousand, nine hundred and seventeen. Present: the Honorable MAURICE T. DOOLING, District Judge.

No. 16,031.

BULL & CO., etc.,

vs.

TUG "FEARLESS," etc. et al.,

**Minutes of Trial. Dated June 6, 1917.**

The hearing of the issues herein was this day resumed. Oscar Sutro, Esq., was present as proctor for and on behalf of libelant. Ira A. Campbell, Esq., was present as proctor for and on behalf of respondent and claimant. Mr. Campbell called C. Randall and Emil A. Sanstrom, each of whom was duly sworn on behalf of claimant and examined, and introduced in evidence on behalf of claimant a certain picture, which was filed and marked Claimants' Exhibit "C" and thereupon rested cause on behalf of claimant and respondent. The matter was then argued by Mr. Sutro and Mr. Campbell and ordered submitted on Points and Authorities to be filed in ten (10), ten (10), and ten (10) days. [26]

*United States District Court, Southern District of  
New York.*

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

against

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Claimant.

**Depositions of Henry McDonald and Sivert Hansen.**

Deposition taken in behalf of the libelant on the 20th day of March, 1917, at the office of Messrs. Barry, Wainwright, Thacher & Symmers, 59 Wall Street, New York City, before a notary public.

Appearances:

Messrs. PILLSBURY, MADISON & SUTRO,  
Proctors for Libelant

(By Messrs. BARRY, WAINWRIGHT,  
THACHER & SYMMERS (Mr. PRYER  
and Mr. FARWELL).

Messrs. McCUTCHEN, OLNEY & WILLARD,  
Proctors for Claimant,

By Messrs. KIRLIN, WOOLSEY & HICKOX  
(Mr. McGRANN).

It is stipulated that the testimony may be taken pursuant to the annexed stipulation; by a stenographer, signing, filing and certification waived; stenographer's fees to be taxable. [27]



**Deposition of Henry McDonald, for Libelant.**

HENRY McDONALD, being duly sworn and examined as a witness for the libelant, testifies as follows:

(By Mr. FARWELL.)

Q. What is your name?      A. Henry McDonald.

Q. What is your business?

A. Master mariner.

Q. You are master of what steamer.

A. "Helen."

Q. In March, 1916, you were master of what steamer?      A. The "Edith."

Q. The steamer "Edith" is owned by what company?

A. A. H. Bull Steamship Company.

Q. Where was the "Edith" on March 4th, 1916?

A. San Francisco.

Q. You were in command of her then?

A. Yes, sir.

Q. When was the "Edith" built?

A. She was launched in 1915, in about August, 1915.

Q. Did you take command of her when she first went into commission?      A. Yes.

Q. And you remained continuously in command of her up to and after March 4th, 1916?      A. Yes.

Q. On March 4th where was the "Edith" lying in San Francisco harbor?      A. At Pier 46.

Q. With her bow in or her stern in?

A. Bow in to the dock.

Q. Which side was alongside of Pier 46?

(Deposition of Henry McDonald.)

A. Port side. [28]

Q. The next pier to the starboard of you,—that is, across the slip was what number? A. No. 44.

Q. And the piers decreased in number as you went further along to the right?

A. Yes, sir, as far as Market Street, decreased.

Q. What was the general direction in which the bow of the “Edith” was pointing as you lay alongside the pier? A. In a southerly direction.

Q. Had you intended to move your steamer on that day? A. Yes.

Q. Where did you intend to go?

A. To the drydock, Hunter’s Point.

Q. That lies in which direction from Pier 46?

A. To the eastward, in an easterly direction.

Q. That would be towards your port hand the way your steamer was heading?

A. Towards the port hand, yes.

Q. Did you make any arrangements about tugboats to move you?

A. Yes, I engaged a towboat to help me to the drydock.

Q. How did you engage him—by letter.

A. No, by ’phone.

Q. Do you remember when you telephoned?

A. No, it was either the morning of the 4th or the afternoon of the 3d.

Q. And what did you ask them to do?

A. That they would have a boat ready to help me to the drydock.

Q. And did they send a tugboat? A. Yes. [29]

(Deposition of Henry McDonald.)

Q. What one?     A. The "Fearless."

Q. What time did she arrive where your steamer was?

A. In the neighborhood of 3:30 or 4 P. M.

Q. In the afternoon?     A. Yes.

Q. Were you ready to move out in the stream when the tugboat arrived?

A. No, we were ready about 20 minutes after she arrived.

Q. After the tugboat arrived just tell us what happened?

A. Well, when we got ready to leave or just before we were ready to leave the tugboat took a line from our quarter.

Q. Which quarter?

A. Starboard quarter, I think it was.

Q. What kind of a line was it?

A. A seven-inch line.

Q. Made of what material?

A. Manila, and apparently he got out of position and in trying to gain his position again he put a great strain on the line and carried it away.

Q. What do you mean by "he got out of position"?

A. Well, he dropped down; instead of remaining astern of us he dropped down in the center of the slip with his boat; there was a strong wind and current, of course.

Q. And then he headed—

A. Headed out towards the north.

Q. And the line parted while he was—

(Deposition of Henry McDonald.)

A. The line parted while he was engaged in getting back in position.

Q. Had you cast off your lines from the dock at that time?

A. The stern lines had been slackened off. [30]

Q. How about the bow-lines, at the time that the lines parted, at the time he started on?

A. The lines had been slackened off aft, and the stern had drifted somewhat across the slip, and in order to allow her to go over squarely on No. 44 dock we slackened her bow-lines.

Q. But at the time the "Fearless" started out with this first hawser that she took, were your bow-lines cast off?     A. No, our bow-lines were fast then.

Q. Did you give the "Fearless" any signal to go off?     A. No.

Q. Do you know whether anyone on your ship did?

A. I don't think so.

Q. This seven-inch line was intended for what purpose?     A. Mooring purposes.

Q. I mean on this particular day, was that the tow-line that you expected the tug to take and tow you out in the stream with?     A. Yes.

Q. What was its condition?     A. Good condition.

Q. Do you know how old it was?

A. In the neighborhood of 6 or 7 months old, I think.

Q. You had used it for mooring the ship?

A. For seven months, yes.

Q. How often had you used that particular line, do you suppose?

(Deposition of Henry McDonald.)

A. Well, we had used it several voyages while in port.

Q. Did you consider that line was sufficiently good to use for towing you out in the stream? [31]

A. Yes, I did.

Q. What happened after this?

A. We dropped the ship over on Pier 44.

Q. Yes?

A. And gave him another line, or the other end of a seven-inch line.

Q. Gave the "Fearless"? A. Yes.

Q. Was that the same line that parted?

A. The same line that parted.

Q. And then what happened?

A. Then we started the ship out again from the dock.

Q. Started out into the stream? A. Yes.

Q. Where were you standing?

A. I was on the bridge.

Q. Where was the first officer?

A. On the fore-castle-head.

Q. And the second officer was where?

A. Aft, under the poop.

Q. You had steam up on your main engine?

A. Yes.

Q. When you started out from the slip how much line was there out between the stern of your ship and the tug?

A. On the second time when we started to pull her out?

Q. Yes. A. I should judge 20 or 30 fathoms.



(Deposition of Henry McDonald.)

Q. Did you give any signal to the tug that you were ready to move out this second time?

A. Yes, we told him we were ready.

Q. And what happened then?

A. We started the engines slowly astern with the boat pulling and immediately stopped [32] them again.

Q. You stopped what, your engines? A. Yes.

Q. And you passed out along the side of Pier 44?

A. Yes.

Q. Out into the stream? A. Yes.

Q. With the tugboat hauling astern?

A. With the tugboat hauling astern.

Q. And then what happened?

A. Then the ship was going a little bit too fast on leaving the dock and went more slowly for a few seconds.

Q. Where was your bow when you put your engines ahead slow at that time?

A. The first time she was hardly clear of the dock.

Q. Do you mean that the bow was inside the harbor end of the pier?

A. Yes. That is the first time.

Q. What was the effect of the engine going slow ahead?

A. Just to stop her a little from going to fast alongside of the dock.

Q. What did you mean to do, to slow her down?

A. Yes, go a little slower.

Q. Did it stop her headway altogether?

A. Oh, no, just slowed her a little.

(Deposition of Henry McDonald.)

Q. Why did you want to slow down?

A. On account of the tide pressing her against the dock, we were destroying the dock somewhat.

Q. Some projections on the side of the ship were scraping [33] along the dock?

A. Yes, sir, scraping along the dock.

Q. How long did you keep your engines slow ahead at that time?

A. I should say three or four seconds.

Q. Was it what you could characterize as just getting her under way? A. That is all.

Q. Then what happened?

A. Then he kept on towing her until I should judge she was 30 or 40 feet outside of the dock.

Q. Your bow was 30 or 40 feet beyond the end of the dock? A. Yes, sir.

Q. How was the weather at this time?

A. Strong southeast wind blowing.

Q. That was blowing from which side?

A. Blowing from the port side toward the starboard.

Q. And how was the tide?

A. Strong ebb tide.

Q. Was that setting with the wind or against the wind? A. With the wind.

Q. In the same direction?

A. In the same direction.

Q. So that the wind and tide would both tend to set you down along the piers to your starboard side?

A. Yes.

Q. What happened when your bow was about 30

(Deposition of Henry McDonald.)

or 40 feet off the end of the pier?

A. I started slow ahead again, slow ahead, thinking the towboat was going to turn the ship around by the stern.

Q. What procedure did you expect the tow to follow in [34] towing you out?

A. I expected that he would turn to port, keep turning our stern.

Q. That is turn to his port? A. Yes.

Q. And tow your stern around which way, to the westward? A. To the westward.

Q. And what was the idea of that?

A. So as to keep the ship turned round and go ahead for our dock.

Q. So that your bow would be pointed—

A. In the direction of the dock.

Q. That is in the direction of the drydock?

A. The drydock at Hunters Point.

Q. When you started slow ahead on your engines what happened?

A. Shortly afterward the mate sang out and said the line was cast off the boat, and before the engine stopped it was in the wheel.

Q. That is, it fouled the propeller?

A. Fouled the propeller.

Q. Did you give any signal to the tugboat to cast off her line? A. No, I did not.

(By Mr. McGRANN.)

Q. May I understand that answer,—you say the mate said this? A. The second.

Q. Is that what the mate said or is that the state-

(Deposition of Henry McDonald.)

ment of the captain, is the last part what the mate said or is that what you said? [35]

A. That is what I got about it from him.

(By Mr. FARWELL.)

Q. What report did the mate make to you?

A. That the line was in the wheel.

Mr. McGRANN.—I object to that.

Q. Did the mate report that the line had been cast off? A. Yes.

Q. After you got in the drydock did you see any of this seven-inch hawser afoul of the propeller?

A. Yes, there was a couple of turns of it around the propeller when we got in.

Q. Did the tugboat, so far as you know, make any report when she cast off the hawser?

A. Not to my knowledge, she made no report.

Q. Was any report made to you about casting off the hawser except by the second mate? A. No.

Q. At that time your engines were going ahead?

A. Had been going ahead, they were stopped when the line got into the wheel.

Q. At the time your propeller became foul did the "Edith" have any motion through the water, either headway or sternway?

Mr. McGRANN.—I object to the form of the question, in that I contend that the line was not afoul of the propeller. It is a conclusion [36] of counsel.

(Question withdrawn.)

Q. At the time you stopped your engine did the "Edith" have any motion through the water?

A. She had a little, very little, tending ahead.

(Deposition of Henry McDonald.)

Q. How far was the bow of the "Edith" distant from the end of the piers then?

A. Somewhere about 30 feet I should judge.

Q. Of the pier ends? A. Yes.

Q. Had you drifted down along the piers?

A. Yes.

Q. Opposite what pier were you when you stopped your engines? A. Off Pier 42 I believe.

Q. Why did you stop your engines?

A. Because of the report from the officer that the line was in the wheel, or had been let go from the tug.

Q. What happened after that?

A. The tugboat went around the ship to try and secure another line from the bow.

Q. How soon after you got the report that the line had been cast off was it before the tugboat got around to your bow?

A. It must have been in the neighborhood of five minutes.

Q. Which side of you did she pass on?

A. Starboard side.

Q. Did she hail you as she passed you?

A. No. [37]

Q. You were drifting to the westward?

A. Drifting to the westward.

Q. What happened after that, after the tugboat got under your bow?

A. He got a line from the mate and ran it out apparently putting a considerable strain on it and it parted.



(Deposition of Henry McDonald.)

Q. Did the tug bring a strain gradually to bear on the line?

A. Well, I could not really say that, at the time I was looking how far we were from the dock, and it was reported the line had carried away.

Q. That is this last hawser, the third hawser?

A. The last hawser, the third hawser.

Q. Had you expected that the tugboat was going to take a line from your bow?

A. Yes, I expected he would after he had thrown the other line off.

Q. But when you started to come out from the slip had you expected that the tug would take a line from your bow? A. No, I didn't think that.

Q. When this last hawser parted how far were you from Pier 32?

A. We were probably 150 or 200 feet.

Q. Describe Pier 32 with reference to the other piers as to length?

A. It stands out much further than the rest of the piers.

Q. About how much further in feet?

A. Probably 200.

Q. At the time that the third hawser parted how was [38] your stern with reference to the end of Pier 32, was it inside of it or outside of it, with reference to a line tending to cross the end of Pier 32?

A. It would be pretty nearly square with it.

Q. So that the entire ship would be inside the end of Pier 32?

(Deposition of Henry McDonald.)

A. Inside the dock, yes, inside of Pier 32.

Q. What size was that third line?

A. The third line was a six-inch line.

Q. In what condition was that?

A. Fairly good condition.

Q. How soon after the tug started to tow did the third hawser part?

A. Probably two or three minutes.

Q. Did the tug succeed in hauling the bow around?

A. Very little.

Q. How did you know that the third hawser parted, did you see it part?

A. No, I didn't see it part.

Q. Was any report made to you?

A. A report from the mate that the line was parted.

Q. At the time you got the report that the third hawser had parted what did you do?

A. At the time it was reported that the third hawser had parted or was let go from the ship—there was some doubt whether it parted or whether it was cast off from the tug.

Q. You don't know whether it parted or whether it was cast off?

A. No, I could not say whether it parted [39] or was cast off.

Q. But you knew—

A. Knew it had been cast off, at least it was not fast to the tug.

Q. There was no line between you and the tug?

A. No.

(Deposition of Henry McDonald.)

Q. What did you do when you got that report?

A. I went full speed astern, fragments of the seven-inch line was fast to the wheel.

Q. What happened then?

A. The ship went astern but not sufficient to clear the dock, Pier 32.

Q. And you came into collision?

A. With the end of the dock.

Q. What part of the dock hit her?

A. The corner of the dock.

Q. Whereabouts did it hit on the "Edith"?

A. Probably about one-third from the bow.

Q. One-third the length aft?     A. Yes.

Q. Would it have been possible for you to anchor when this third line was cast off or parted?

A. No, not without damaging the ship.

Q. Why not?     A. Too close to the pier.

Q. If you had let go an anchor what would have been the result?

A. Well, she would have swung around on the dock and very probably broken off her rudder or wheel or done some damage, which I was trying to avoid.

Q. How much water is there there?

A. There is plenty [40] of water, probably—I am not sure, probably 8 or 9 fathoms of water.

Q. How much chain would you have had to have out in order to hold her against that wind and that tide?

A. I would have had to have at least put out about

(Deposition of Henry McDonald.)

30 fathoms to have checked her with the wind and tide.

Q. And if you had veered out 30 fathoms where would that have brought your stern with relation to Pier 32?

A. As near as I could judge it would have brought us on somewhere about the stern, but I could not exactly say where.

Q. Would it have let your stern go onto Pier 32?

A. Yes, sir.

Mr. McGRANN.—Objected to as entirely speculative, calling for a conclusion and not based on the facts.

Q. You say you didn't know how much water there is there? A. No, not exactly.

Q. Are you familiar with the tidal conditions in San Francisco Harbor?

A. Not very familiar with them.

Q. What was the result of the collision with the pier generally?

A. It damaged the ship considerably on the starboard side.

Q. What happened after the collision?

A. Immediately we steamed toward the drydock.

[41]

Q. And did you anchor when you came up to the drydock?

A. No, the tugboat assisted us when we got up there with another line and we succeeded in docking.

Q. Who supplied this fourth line?

A. The towboat.

(Deposition of Henry McDonald.)

Q. What size was it?

A. I could not say the size of it.

Q. Approximately?     A. Probably eight inches.

Q. Could you say whether it was as large as a twelve-inch hawser?

Mr. McGRANN.—Objected to, he has already said what it was.

Mr. FARWELL.—He said probably.

A. (Continued.) It might have been, I really could not say, it was getting dark.

Q. Referring to the parting of the second hawser while you were still in the slip what can you say as to the cause of that parting?

A. The extra strain that he put on to it in the jarring and jerking of the boat by going ahead swiftly before the line was tight.

Q. Do you mean he brought a sudden jerk on the line?     A. Brought a sudden jerk on the line.

Q. And you think that caused it to part?

A. That caused it to part.

Q. Do you know of any reason why the tugboat could not have used the line which was subsequently used in docking you at the drydock, when the tugboat came [42] around your bow after casting off the second hawser?

A. I see no reason why she could not have used it.

Q. Would it have been possible for the tugboat to have put her bow against your starboard bow and shoved you around?     A. Certainly.

Q. Is this latter method the customary way of turning ships?



(Deposition of Henry McDonald.)

Mr. McGRANN.—I object to these questions as very leading.

A. Yes.

Q. Do you know how much your repairs cost?

A. In the neighborhood of \$14,000 I think.

Q. Did you see the repair bills? A. No.

Q. In the answer it is alleged in the last three lines of page 8 and the beginning of page 9 “that the steamship had been backed out of the slip and into the bay approximately 700 feet when the hawser had been cast off”; is that a correct statement?

A. No, I consider not.

Q. Did any part of your ship ever get 700 feet out into the stream? A. No, I don't think so.

Q. How far did you say your bow was when the second hawser was cast off?

A. About 30 or 40 feet from the end of the dock.

Q. Was there any delay in passing out the third line—that is the one that was passed out from your bow after the [43] tugboat reached your bow so that she could take a line? A. No delay.

Q. At page 9 of the answer, line 30, and page 10, lines 1 and 2, it is alleged that the master of the tug suggested that you back your engines; that was subsequent to the parting of the third hawser; did the master of the tugboat make any such suggestion that you heard? A. Not to my knowledge.

Q. That is, you didn't hear it? A. No.

Q. What did the tugboat do after the third hawser had parted?

A. He steamed up ahead of us to Hunters Point,

(Deposition of Henry McDonald.)

he didn't do anything in connection with the ship in getting there after that.

Q. I don't think you got the question; after the third hawser parted—between that time and the time when the collision occurred, what did the tug-boat do?

A. She just simply laid where she was, didn't do anything.

Q. Did he make any effort to assist you?

A. Made no efforts to assist me.

Q. Did he attempt to pass you a line from his boat?     A. No, sir.

Q. You have been towed out stern first from piers in other harbors besides San Francisco Harbor, have you not?     A. Yes, very often.

Q. What ports, mention a few?

A. New York or any [44] of the ports where I have been trading around the United States and the Atlantic Coast, such as Boston, Philadelphia, Baltimore, all these ports they invariably turn the ship around with a stern line when towing out in that direction.

Q. In those cases did you give any signal to the tug to cease towing or to cast off his line?

A. To cease towing, yes, and to cast off the line.

Q. Is it customary for the ship to assist in turning by the use of her own engine?     A. Yes.

Q. How does she generally do that?

A. By going ahead either starboarding or porting her wheel as the case might require.

(Deposition of Henry McDonald.)

Q. And the tugboat, during this maneuver, does what?

A. Does the pulling around and down to put the ship's head in the same direction.

Q. Which way is the tug pulling?

A. Well, for instance if you wish to pull the ship's head to starboard, the tug must pull her stern to port.

Q. In this case when the "Fearless" was taking you out?

A. We wished our head to go to port, consequently we wished the tow to pull the stern in the opposite direction.

Q. How far did you expect the "Fearless" to tow you out in the stream before you were going to give her the signal to stop towing?

A. We would have been about 50 feet [45] or 60 feet from the dock when we got turned round, if he had kept towing.

Q. That is you mean substantially pivoted right in that position? A. Yes.

Cross-examination by Mr. McGRANN.

Q. Where is your bridge on the "Edith," how is it located?

A. It is about one-third of the ship I should judge, from the bow.

Q. How long is the "Edith"?

A. About 328 feet.

Q. As you stood you were a little over 200 feet from the stern?

A. In the neighborhood of about 200 feet.

(Deposition of Henry McDonald.)

Q. What kind of a vessel is the "Edith," how is she constructed, on what system?

A. She is the Isherwood system.

Q. Flush deck?

A. No, what they call a three island deck.

Q. Her bridge, I suppose, is elevated above the middle structure?     A. Yes.

Q. How high is the bridge from the water line?

A. It is about probably 30 feet.

Q. Were you on the bridge all the time throughout this maneuver?     A. All the time.

Q. Who else was with you there?

A. The third mate and the quartermaster. [46]

Q. Did you have your steam steering-gear in operation?

A. Yes, the steam steering-gear.

Q. Who was operating the engines, I mean giving signals, you personally?

A. The third mate, with my orders.

Q. Did you keep any record of your engine movements on that occasion?     A. We did not, no, sir.

Q. Didn't you keep them in the log-book?

A. We do generally.

Q. Did you keep any memorandum whatever of the movements and what times the various signals were made?

A. No, we didn't on that occasion.

Q. Who does that ordinarily?

A. The third mate.

Q. How about in the engine-room, don't they keep a record in the engine-room?

(Deposition of Henry McDonald.)

A. They keep a record in the engine-room.

Q. Do you know whether they kept any on this occasion? A. I think so.

Q. Where is the "Edith" now?

A. At Porto Rico.

Q. Do you trade between Porto Rico and the east coast? A. And New York, yes, at present.

Q. When is she due here again, do you know?

A. In about two weeks.

Q. Is the chief engineer still on board the "Edith"? A. No, he is not there.

Q. Are any of the officers, to your knowledge, on the [47] "Edith" that were on her then?

A. Not any, to my knowledge. Yes—I think the first assistant.

Q. The log-books remained on the vessel, didn't they? A. I imagine they did.

Mr. McGRANN.—I call for the production of the log-books bearing on this occurrence.

Q. At any rate you had an unobstructed view of everything about the ship from where you were, did you not? A. Yes, on the ship I had.

Q. How much water were you drawing on this occasion?

A. We were drawing I think about ten feet.

Q. Beam?

A. No, probably about eight feet beam.

Q. Down by the stern? A. Down by the stern.

Q. You say eight feet *mean*?

A. I think in the neighborhood of that, yes.

Q. What would your draft astern be?



(Deposition of Henry McDonald.)

A. Probably about ten feet.

Q. You were light then? A. Yes.

Q. Did you have any ballast on?

A. We had some little ballast. That is approximately, you know.

Q. I am asking you for your best judgment?

A. Yes.

Q. What sort of engines has the "Edith"?

A. We have triple expansion engines.

Q. What speed does she make ordinarily, full speed? A. She is about a 10 knot boat. [48]

Q. Single propeller? A. Single wheel.

Q. What sort of anchors had you?

A. We had patent anchors.

Q. Those anchors were ready for letting go, were they not? A. All ready.

Q. What weight were they?

A. They were about two tons or 2½.

Q. Pretty heavy anchors for that tonnage, weren't they? A. Well, they are Lloyds regulation.

Q. What is your tonnage, by the way, of the "Edith"?

A. The tonnage is 27 something.

Q. 2700? A. Yes.

Q. Net or gross? A. Net.

Q. When did you leave the "Edith"?

A. I left the "Edith" in June 1916.

Q. Who owns this vessel that you are on now, the "Helen"?

A. The Bull Insular Line, A. H. Bull & Company, agents.

(Deposition of Henry McDonald.)

Q. You yourself made the engagement for this tug, did you, over the telephone? A. Yes.

Q. It was not intended that the tug should do anything but assist you into the dock?

A. That was my intention.

Q. You did not intend that she should haul you out of the slip at all, did you? A. No.

Q. You did not think you required the tugboat to haul you out of the slip, did you? A. I did not.

[49]

Q. You frequently back out of that slip there in San Francisco and turn and go on wherever you want to go? A. Very frequently.

Q. Why was it that you didn't do it on this occasion?

A. It was getting late in the afternoon—getting late in the evening, and I thought we would do it much quicker and get into drydock before dark.

Q. And when the tugboat came I presume you told him that in addition to putting you into the dock at Hunters Point you would like to have him haul you out of the slip?

A. No, I didn't mention anything to him at all.

Q. You did not? A. No.

Q. Then that was a voluntary service on his part, was it, hauling you out?

A. I imagine he came so as to have an extra charge, or he may have understood that we meant to have him there.

Q. Didn't you tell him anything about hauling you out of the slip; how did he get your line?

(Deposition of Henry McDonald.)

A. He sent a man off and we gave him a line, but I didn't speak to the captain, didn't see the captain, told the second mate to give him the line, send the line over.

Q. You saw the mate give him the line, did you?

A. Yes.

Q. You saw the tug go out?      A. Yes.

Q. Pointed out of the slip?      A. Yes.

Q. You were in a position to see what the tug was [50] doing, were you?

A. I saw them for awhile until he got out of position. Of course when he got right astern of my ship I could not see him very well with a short tow-line.

Q. You could see him if you looked, could you not?      A. No.

Q. Why?      A. I mean I could not see him.

Q. Why couldn't you?

A. Because the ship was too high and he had a short line, not over 30 or 40 fathoms of line. Well, I may have seen his stack or part of his bow; I could not see all his boat, I remember that very distinctly.

Q. How high would you say the stern was, the poop-deck, from the water-line?

A. It would be somewhere in the neighborhood of 20 feet.

Q. Could you see the second officer?      A. Yes, because he may have come from one side to the other so I could see him.

Q. If the tug had gotten out of position and gotten even on your starboard quarter what prevented you from seeing the tug in that position?

(Deposition of Henry McDonald.)

A. I seen her.

Q. Then when the tug did get out of position, if it did get out, as you say, there was nothing to prevent you seeing her in that position, was there?

A. Nothing at all. [51]

Q. Before I go any further, tell me what time it was that the tug arrived there, if you know?

A. As far as I know about 3:30.

Q. As a matter of fact, did you see the tug when she was then in that position on your starboard quarter from where you were in the slip?

A. While she was out of position you mean?

Q. Yes? A. Yes.

Q. You say at that time you had your stern lines hauled in?

A. No, not at all, but they had slacked them up, I understand.

Q. Did you see the line part?

A. Yes—well, yes, I might say so because as the boat ran ahead of course I could not see the line where it did part, under the stern, as it were, but as they went by the mate sang out that the line had parted, but at that time they were taking in the lines, unmooring from the dock, and the stern began to stand over.

Q. Could you not tell from what you saw of the tug's movements that the line must have parted?

A. No, because the tug stopped as soon as it parted, it was astern, I could not really see then whether it had parted or not.

Q. You had your bow-line out when it was reported

(Deposition of Henry McDonald.)

to you that the line had parted? A. Yes. [52]

Q. And some of your stern lines, I take it?

A. Yes.

Q. So that your moving over toward the other side of the ship, that is, from the southern side of Pier 46, was a matter which you did yourself?

A. Yes.

Q. That was not caused by the tug's parting the line, was it?

A. Well, in reality it was, because we didn't expect to part the line, and the second mate began to take in his line which let the ship practically loose from the dock aft.

Q. You could have held on if you had wanted to, could you not?

A. Well, probably I could but it seemed a good idea to drop her over to the other dock.

Q. You did not damage the ship by dropping over?

A. No.

Q. No damage done at all? A. No.

Q. So that as a matter of fact the first parting had nothing to do with subsequent events, isn't that true? A. Well, in that respect.

Q. When did you get this line that parted, or the first line that you are talking about?

A. They came out with the ship, new.

Q. You had had it on board ever since?

A. Four times.

Q. You had had it on board ever since?

A. Had it on board ever since.

Q. Do you know where that line was bought?



(Deposition of Henry McDonald.)

A. No, sir. [53] I could not tell you.

Q. Somewhere out there on the west coast?

A. No, it was either bought in New York—New York, probably, or Baltimore.

Q. She was fitted out at New York?

A. Fitted out at Baltimore.

Q. At any rate you had been using that line right along for mooring purposes?

A. Yes, when we needed it.

Q. How long do you think a hawser lasts, what has been your experience?

A. How long a line would last?

Q. Yes?

A. Of course that depends altogether on the usage it gets. You might wear a line out in two months so it would not be fit for anything or it might last you a year and be a very good line.

Q. Is it not said that the life of a manila hawser is usually six months?

A. I have not heard it; it depends entirely on the usage of the line.

Q. How long was this hawser, do you know?

A. I think about 90 fathoms.

Q. Can you tell me where it parted on this first occasion, from either end?

A. I think they had out about 20 or 30 fathoms, as far as I know, at first.

Q. You mean it parted at the ship or at the tug?

A. No, it parted, I think, between the ship and the tug, if I understand right. [54]

Q. At any rate you hauled the end aboard and had

(Deposition of Henry McDonald.)

it there?     A. Yes, sir.

Q. I understand that the same line, the same end, was passed out again?

A. No, I don't think the same end, not the same end.

Q. Do you know whether or not it was the same line?     A. The same line, I understand.

Q. But you don't know that?

A. Well, that is what I go by, what I am told.

Q. But you don't know it yourself that the line was passed for the second line?

A. Yes, the second line was a seven-inch line.

Q. Was it the same line that had parted?

A. Yes, sir, the same line, and I had better say the same line because I am told it was the same line, of course I was not aft then.

Q. And you don't know?     A. No.

Q. I am trying to get at the facts, it does not make any difference whether you say so or don't; I want to know the fact?     A. That is the fact.

Q. You seem to be not quite sure of it?

A. The last line was a 7-inch line.

Q. How much did the tug have out of that line, the second line?

A. I should judge in the neighborhood of 30 fathoms, along there. [55]

Q. Who gave the signal to the tug that time to go ahead?

A. That time, you know, she was on Pier 44 and I told him to go ahead, waved my hand to the third officer and told the towboat to go ahead.

(Deposition of Henry McDonald.)

Q. You simply waved your hand? A. Well—

Q. Did you see them reply from the tug to that waving of yours?

A. No, I could not see the tug then, she was way astern of me, I could not see the captain, I could see the stack.

Q. Why didn't you have some signal system or whistle system?

A. Well, I would have to find out if the captain knew what I was whistling about.

Q. At any rate you didn't arrange any signals?

A. No.

Q. You depended on passing word by the second officer? A. By the second officer.

Q. What was the second officer's name?

A. Hansen.

Q. What was the third officer's name?

A. Turnquist.

Q. What was the chief officer's name?

A. Cummings.

Q. Then you got started out on this second occasion after you had given the signal, and I understand you gave the order slow astern on your engines? A. Yes.

Q. That order was obeyed, was it?

A. Obeyed.

Q. And you came on out of the slip? A. Yes.

Q. Do you know what the force of the tide was that [56] afternoon?

A. I should judge about two or three knots.

Q. Setting to the northward, you say?

(Deposition of Henry McDonald.)

A. Setting to the northwest, yes.

Q. And what was the force and direction of the wind?

A. The wind was southeast, I should judge, about force 8.

Q. Beaufort scale?      A. Yes.

Q. You knew the weather conditions before you started out, did you not?      A. Pretty well.

Q. Perfectly well?      A. Yes.

Q. How far out did you intend that the tug should haul you, did you say?

A. Well, I didn't have any special distance but I supposed he would turn me around when I was 50 or 60 feet from the dock.

Q. That is when your *stem* was 50 or 60 feet out from the end of the dock?

A. Yes, he would start to swing me.

Q. And you say that you had anticipated that he would swing your stern to his port, and to your own starboard?

A. No, swing my bow to port and swing the stern around to starboard.

Q. He was made fast to your stern?      A. Yes.

Q. And you anticipated that he would swing your stern to your starboard, did you not?

A. Yes.

Q. Why did you take it for granted that the captain of the tug would do this without any orders from you? [57]

A. Why, it was a very natural thing for him to do.

(Deposition of Henry McDonald.)

Q. You say it was a natural thing for him to do, but you did not give him any orders to do this, did you?

A. Well, he knew where the ship was going, he didn't suppose he was going to turn my ship way round the other way, way round, when he could by just turning her half the distance.

Q. Tell me one thing; did you give the captain of the "Fearless" orders to turn your stern over to your starboard side?     A. No.

Q. You did not?     A. No.

Q. To get the engine movements a little more clearly in mind and on the record, just as nearly as you can state give us the position of the "Edith" when you first stopped the engines while you were moving out of the slip?

A. I stopped the engines at first when she was a little more than half out of the slip.

Q. Does that mean that half of the ship was clear of the slip?     A. Yes.

Q. How long did you keep the engine stopped then?

A. Then before she cleared the dock I went ahead for a few seconds.

Q. And did you stop again?

A. Then I stopped again.

Q. On the second stop tell me what position the "Edith" was in?

A. Her bow was just pretty nearly square with the dock. [58]

Q. On a line with the end of the dock?



(Deposition of Henry McDonald.)

A. On a line with the end of the dock.

Q. And what was the next thing you did with the engines of the "Edith"?

A. Then when she got clear of the dock about I should judge 30 to 40 feet I went slow ahead with my wheel hard astarboard.

Q. Hard astarboard?      A. Hard astarboard.

Q. That would tend to throw your bow to port, would it?      A. Yes, sir.

Q. Did you keep your engines going ahead?

A. No, after starting that time I looked astern and the mate put up his hands to stop.

Q. To you?

A. Yes, but he had thrown the line off the towboat.

Q. Who had thrown the line off the towboat?

A. The towboat captain.

Q. Did you see that?

A. No, I could not see it.

Q. How did you know that he had done that?

A. They told me.

Q. By voice?      A. Yes.

Q. How long do you think it was from the time that you started ahead and put your helm to starboard up to the time that you saw the mate signal this way (indicating) that the hawser had been thrown off?

A. I should judge— [59] well, probably five or six seconds.

Q. Are you quite sure that you did not stop the engines before you saw the mate's signal?

(Deposition of Henry McDonald.)

A. No, I didn't stop the engines, I had just started them.

Q. You had just started them and you didn't stop them until after the mate signaled?

A. After the mate signaled that the line was gone.

Q. Did you say that the mate had hauled in the line?

A. Not then, when the engines were stopped, but before we took time to stop them the mate was hauling the line in, and it was afoul of the wheel.

Q. Now, did you go aft to see what the conditions were at that time?     A. No, I didn't.

Q. Why do you say that the line fouled the wheel, you didn't see it, did you?     A. Yes.

Q. How did you see it?

A. I got the end off after when we went into dry-dock.

Q. But I am talking about the time, at the time and the position you were then in, how could you see the line had fouled the wheel?

A. I sent the third mate aft to see if it was foul of the wheel.

Q. And you yourself didn't see this?     A. No.

Q. Then you don't know from your own personal observation?

A. I do know now, yes, of course I know.

Q. You may have seen the hawser afoul of the wheel [60] after you got to Hunters Point, but what I want to know is did you know then, of your own knowledge, of this occurrence? Did you at this time see the wheel afoul?

(Deposition of Henry McDonald.)

A. I don't know but what I went aft myself, really I think I did go aft, I don't like to say without being sure of it but I really think now I did go aft.

Q. I don't want to put you in any way in a false position, I want the facts exactly as you saw them?

A. I swear I think I did—no, I could not say that I did.

Q. As it stands, you were saying that the line fouled the wheel because some one else told you so, that was the situation at that time? A. Yes, sure.

Q. Did you give the tug any orders after that stage of the maneuver? A. No.

Q. Just tell me again where the ship was when this occurred, this signal from the officer aft?

A. I explained that I was about 30 or 40 feet from the dock.

Q. Which dock?

A. No. 40 I guess, we were down at 42 then, I think.

Q. Right abreast of No. 40?

A. Somewhere right abreast of No. 40.

Q. How were you heading with reference to the slip?

A. The same as when we pulled out of the dock.

Q. Had not turned either one way or the other?

A. Turned a little but not a great deal. [61]

Q. Which way did it turn, if it turned?

A. A little to starboard,—a little to port, her bow, on the starboard wheel.

Q. You mean that the bow of the "Edith" had turned slightly to port?

(Deposition of Henry McDonald.)

A. Slightly to port, that is right.

Q. In that situation, didn't it occur to you that you ought to do something?     A. Yes, it did.

Q. What did you do?

A. Well, then the towboat was coming around and I knew he could get a line out, which he did, and the consequence was he carried it away.

Q. How was your helm all this time while the ship was coming around,—heading, rather?

A. The helm was hard astarboard.

Q. Wasn't the ship moving under the influence of the wind and tide?

A. Yes, going with the wind and tide.

Q. Was she closing in on the piers?

A. Closing in on the piers a little.

Q. You had the full force of the tide and wind, I suppose, on your port side at that time?

A. Port side.

Q. Didn't it occur to you to drop an anchor?

A. I could have done so, but I knew I was going to do some damage to the ship and I thought if we could get a line out we would not do any damage, did not want to do a minor damage when we expected to get away without any. [62]

Q. You could have dropped an anchor there as far as the custom of dropping an anchor is concerned; you could have dropped an anchor or you could have dropped two of them?

A. No reason why we couldn't.

Q. That would have been the proper thing to do?

A. I don't think so.

(Deposition of Henry McDonald.)

Q. There was no reason why you could not have dropped both of them as far as the anchors were concerned?

A. No reason why I could not have dropped them.

Q. That would have retarded your motion at any rate, would it not?

A. It would have swung the ship, it would not have retarded on the general movement.

Q. Don't you think it would have retarded the ship if you had had two anchors down under the forefoot?

A. It would have stopped her if you had got room.

Q. Aside from the room proposition would not two anchors underneath the forefoot have stopped the ship?

A. That seems to be a very material question because—

Q. What is your judgment about it?

A. When we anchor in the stream the anchor is supposed to hold the ship—

Q. What I want to know is, aside from what you have in mind about the swinging of the ship, would not the dropping of both anchors under the forefoot have brought her up in some position?

A. Yes, it would have turned her around. [63]

Q. Now then, if she had swung you think she would have swung onto the pier do you?

A. Onto the pier, yes, I do.

Q. Would she not have taken the course of the tide?



(Deposition of Henry McDonald.)

A. She would, probably, after she got clear of the pier.

Q. Do you know how the line of the piers is opposite Pier 32?

A. I am not very familiar with that, no.

Q. Do you know what the direction of the tide was exactly along there?

A. Running down across the piers.

Q. About parallel with the outer end of the pier?

A. I should judge so, yes.

Q. Then is it not true that you would have brought up in a position parallel to the ends of the piers?

A. Yes, if you had room to swing, you would have to have considerable chain.

Q. Assuming that you were 30 to 40 feet out from the end of the piers and you have said that your ship would have stopped with two anchors down, and that she would have swung on the tide, and that the tide was parallel to the ends of the piers, don't you see that you would have had clearance off the pier then?

A. No, you are not giving us any allowance for the chain, the chain I would have to give the ship to pick her up.

Q. I said in my first question if you dropped both anchors right under the forefoot; you don't have to have [64] any chain practically, just enough to reach the bottom?

A. That would not have helped.

Q. You cannot say it would not have helped; why would it not have helped?

(Deposition of Henry McDonald.)

A. It would not have helped unless you gave her sufficient chain.

Q. You will concede, won't you, that it would have retarded the movement of the ship somewhat?

A. No, I would not, unless you gave her sufficient chain.

Q. You don't think two heavy anchors dragging along the bottom would prevent the ship from moving as quickly as if the anchors were not there?

A. I admit that.

Q. If you had done that? A. Yes.

Q. Well, we have got that far; you will concede that won't you? A. Of course, anyone would.

Q. Now as to this line that you gave the towboat "Fearless" from your starboard bow, I believe it did come from the starboard bow, didn't it?

A. Yes.

Q. And when did you get that line?

A. That was the same age as the other line.

Q. That you said was only in fair condition?

A. That was in fair condition.

Q. You stated the other line was in good condition, the first one? A. Yes.

Q. So that you mean to imply, I take it, that the second line was not in as good condition as the first one? [65] A. Not quite.

Q. What size was it? A. Six-inch line.

Q. It was smaller than the first one?

A. A little smaller than the first one.

Q. Did you give the tug any instructions then, when you got out this bow-line and gave it to the tug,

(Deposition of Henry McDonald.)

did you give the tug any instructions?

A. Nothing more than with my hands to keep up that way (indicating the port bow).

Q. What did you say caused the parting of that line, or did you say?

A. No, I don't know what caused it.

Q. How long after the tug took that third line, as we have called it, did it part?

A. I should judge about three minutes, along there, I think about that time.

Q. I understood you on direct examination to say that when the third line parted you were probably 150 to 200 feet from Pier 32, is that right?

A. Yes.

Q. In what direction do you mean from Pier 32, how would you lay that off, that 150 or 200 feet from the pier.

A. In an easterly direction, Pier 32 runs out, a much longer dock than the others.

Q. How did it bear from you as you lay there?

A. In a northwest direction off the starboard side of the ship.

Q. Off the starboard beam?

A. Off the starboard beam.

Q. How would you say you were heading at that time? [66]

A. Still in a southerly direction.

Q. I wish you would put down on this paper just the location of these things, put Pier 32 down there and your ship.

Witness does as requested. Witness indicates the

(Deposition of Henry McDonald.)

position of the "Edith" with respect to Pier 32 when the line parted, known as the third line, which was the bow-line. He also indicates the position of the tug, which is marked "tug" and also the respective position of Pier 34, which is marked 34.

The sketch is offered in evidence.

Mr. FARWELL.—Objected to unless the captain is given an opportunity of correcting it in accordance with his testimony.

It is marked Claimant's Exhibit "A."

Q. I understand that in this position you were about 150 feet, the "Edith" was about 150 to 200 feet from Pier 32, is that correct?     A. I think so.

Q. Was it in that position you started your engines astern (referring to Claimant's Exhibit "A")?

A. Yes.

Q. You didn't have any difficulty in operating the engines, did you?     A. Not after we started, no.

Q. Was that the first effort that you had made from the time that the line was cast off, as you say, up to the time that the bow-line parted?

A. Yes. [67]

Q. Why was it that you did not make an effort to start your engines before?

A. I was rather afraid when the seven-inch line fouled the wheel, thinking the towboat would have it performed or we would get out without that.

Q. Didn't you think that there was a position of danger there?     A. I could readily see it.

Q. When did you first see that?

A. The danger of the line being around the wheel?

(Deposition of Henry McDonald.)

Q. No, I mean did you think there was a position of danger from your drifting down, as you have described? A. Yes, I did.

Q. You knew that eventually you must bring up against something, did you not?

A. I surely did.

Q. How was it, I want to know why it was that you did not start your engines before you did?

A. Because I didn't want to, I was afraid to attempt that, I was depending on the towboat.

Q. Had you had any communication with the engine-room from the time that the second line was cast off up to the time that the third line was cast from your bow to the tug? A. No.

Q. Had not sent any word down to the engineers about this? A. No.

Q. And yet in that time you had drifted down from off Pier 42 to this position between Pier 34 and Pier 32, is [68] that true? A. Yes.

Q. Do you know how long that distance is?

A. No.

Q. Didn't you think that the situation there demanded that you take some risk to save your vessel from collision with the pier?

A. I was expecting the towboat to do something, depending on the towboat.

Q. You were relying on the towboat?

A. Depending on the towboat.

Q. You did not anticipate that this towboat could handle your steamer in that wind and tide without some assistance from the steamer, did you?



(Deposition of Henry McDonald.)

A. No, but it could easily swing us around, though.

Q. Then you wish to modify your answer to the extent that she could easily have swung you around?

A. I don't know, you didn't ask me that question.

Q. What I asked you was this: did you think that this tug could handle your steamer in that wind and that tide without any assistance from the steamer?

A. No, except to swing her around as I expected him to do, I wanted him to swing her around.

Q. You said that Pier 34 was about 200 feet inside of Pier 32, did you not?

A. I thought that, I don't know whether it is so or not.

Q. I have a little diagram here which is supposed to be a view of the San Francisco water front in that vicinity [69] there, from 24th Street to Laguna Street, marked 1916; on that diagram it indicates that Pier 32 projects out beyond Pier 34, is that your memory of it?     A. Pier 36?

Q. Just take a look at this.

A. It might be, I could not say so.

Q. I just show you this to refresh your memory, let me know if that is correct.

A. Very likely it is correct, I could not say.

Q. Do you know of your own knowledge whether or not Pier 36 does project out beyond Pier 34?

A. No, I do not.

Q. Pier 34 is about on a line or approximately so with Pier 44, is it not?     A. As far as I know, yes.

Q. The end of it I mean?     A. The end of it.

Q. I would like to know what you base your state-

(Deposition of Henry McDonald.)

ment on that you never got out any further than 30 to 40 feet outside of Pier 44?

A. Only my idea of what I think, best of my opinion.

Q. What is the beam of your ship? A. 41 feet.

Q. Do you mean to say that you did not get out any further than the beam of your ship away from the end of the dock?

A. You mean the width of the ship?

Q. Yes, the width of the ship?

A. I don't think we got out any further than that.

Q. You don't appear to be very sure of that point?

A. Of course I am. [70]

Mr. FARWELL.—I object to counsel's statement.

A. What I am giving you is the best of my knowledge and opinion.

Q. Is it not true that you are not very sure of that distance? A. I feel quite sure of it.

Q. Let's put it in this way: how far outside of Pier 46, the one at which you were lying, did you get at any time?

A. Pier 46 and Pier 44 are about the same distance aren't they?

Q. I am asking you for your judgment now; about how far outside of Pier 46?

A. About the same distance I should judge.

Q. About the same distance out, 30 to 40 feet?

A. Yes.

Q. You feel you got 30 to 40 feet clear of the outer end of Pier 46? A. I should judge about that.

Q. Would you be surprised if I told you that Pier

(Deposition of Henry McDonald.)

46 projected out 100 feet or more from Pier 44?

A. I would be a little bit surprised, yes, I don't think it does.

Q. And if you were 30 to 40 feet out from Pier 46 and my statement is correct about that, you would still be farther out than Pier 44?

A. Yes, you will remember that we left Pier 44, you know.

Q. Yes, that is what I am basing my question on.

A. (No answer.)

Q. According to my little diagram here I make it about [71] something over 2,200 feet from Pier 44 to where you brought up about Pier 32, would you say that that is about correct?

A. 2,200 feet, I should think it was pretty nearly correct.

Q. Then if that is true you must have drifted to the northwestward about that distance from the time that your line was cast off, the second line, as you say, up to the time—

A. That we struck the dock.

Q. That the collision occurred with the dock?

A. I guess likely, it would not take her long to do that.

Mr. FARWELL.—I don't think the witness understood the question. I ask that the question be repeated to him.

Q. (Repeated.) Then if that is true you must have drifted to the northwestward about that distance from the time that your line was cast off, the second line, as you say, up to the time that the collision occurred with the dock?

(Deposition of Henry McDonald.)

Mr. FARWELL.—I object to the question on the ground that the captain testified that when the line parted he was opposite Pier 42, and your question assumes Pier 44.

(By Mr. FARWELL.)

Q. Opposite what pier were you when the second line was cast off? A. Opposite 42.

Q. So that it was from that pier that you drifted?  
[72] A. Pier 42.

(By Mr. McGRANN.)

Q. That would make a difference, according to this, of between 300 and 400 feet? A. Yes.

Q. As modified, then, you would say that you drifted about 1800 feet? A. 1700 or 1800 feet.

Q. That is giving you 400 feet, didn't you cover any distance ahead when you first put your engines ahead and starboarded the helm after leaving the slip?

A. No, she had just stopped, just stopped and probably may have started the least bit ahead, but the few seconds that we were going she only had stopped her sternway.

Q. Is it not true that this second line slacked up as you were leaving the slip and after you cleared the pier; didn't it slack up after you cleared the pier and after you started ahead on your engines?

A. You mean this towboat stopped?

Q. No, did the tow-line slack up any?

A. Well, it could not have slacked up unless the towboat stopped towing, not to my knowledge.

Q. You were moving astern, were you not?

(Deposition of Henry McDonald.)

A. Yes.

Q. Is it not true that the second officer had hauled in a part of this line before he gave you any signal?

A. No, they started to haul it in as soon as the towboat threw it off but at the same time the second officer was making signs to me that the line had gone from the towboat. [73]

Q. Don't you think if you had had an understanding with the towboat about what you were going to do that all these difficulties would not have occurred,—isn't that true?

A. Or if the towboat had had an understanding with me, that would be better.

Q. But you were in charge of your own ship, were you not?

A. Yes, he seemed to undertake something he didn't know anything about or what he was going to do.

Q. Didn't you permit him to undertake this thing?

A. I supposed he was a harbor towboat man, proper towboat man, down around the docks there we think these men are all good men, they are supposed to be good men, we never have any trouble with them.

Q. You didn't think he was going to keep hauling you backwards all the time, did you?

A. I certainly did think so.

Q. All the way up to Hunter's Point?

A. No, no, I explained that I expected him to turn the stern around.



(Deposition of Henry McDonald.)

Q. There was a pretty good sea on, was there not, on this occasion?

A. There was the ordinary wind-lop, as we call it.

Q. Just what does that mean?

A. Just an ordinary sea.

Q. Do you know what your turning circle is, by that I [74] mean do you know how big a circle you make in turning under a hard astarboard helm?

A. It all depends on circumstances, if there is any wind the ship will turn around slower than if there is no wind, much slower.

Q. So under the conditions prevailing on this occasion on this afternoon of March 4th, what would be the diameter of the turning circle under a hard astarboard helm on the "Edith"?

A. It would be pretty large, for the ship herself it would be pretty large.

Q. What is the best estimate you can give of the diameter of the turning point of the "Edith"?

A. Probably the radius of a diameter of 1,000 feet.

Q. Well, now, then, we have a situation according to your own testimony whereby you say you were only 30 or 40 feet off the pier end and from that position you chose to go ahead with a hard astarboard helm and hoped to turn your vessel around when you yourself admit that it would have required 500 feet sea room to get her through 8 points, would it not?

A. Provided I was doing it myself—I was depending on the towboat to turn her around, I would never have tried to do it alone.

(Deposition of Henry McDonald.)

Q. You did not signal the towboat when you went ahead on your engines and starboarded your helm, did you?     A. No.

Q. How did you think that the towboat would be able to understand what maneuver you were contemplating unless [75] you gave some order?

A. Even if he didn't understand, even if he didn't granting that he didn't understand, why should he heave the line off when he knew it would assuredly get in the wheel, and towboat men do know, and know the way the ship was going and where, and knowing the circumstances and the way they turn ships I should say anyone, well, not anyone, but any other towboat would naturally turn the ship around, he knew which way we were going.

Q. You were the one who chose the moment when you would perform this maneuver of turning the ship, were you not?     A. Decidedly.

Q. You chose a moment when you were only 30 to 40 feet off the end of the pier, Pier 44, according to your own testimony, to go ahead on your engines, hard astarboard your wheel and make a turn of substantially eight points, is not that true?

A. Yes, but—

Q. Wait a moment now, that is enough; you did that without any signal or without any order to the tugboat, is not that true?     A. Yes.

Q. Don't you see that it was an impossibility to have turned the "Edith" in that space against both wind and tide?     A. No, sir, I don't see it.

Q. You don't concede that?

(Deposition of Henry McDonald.)

A. No, I will not; I have done it too often not to know.

Q. You did not hear the master of the "Fearless" suggest [76] to you to back your engines, I believe? A. No, I did not.

Q. As to the fouling of the propeller, you now know, of course, that the propeller, if it was fouled at all, at the time you thought it was, was not fouled sufficiently to have prevented moving the engines, was it? A. We found that out afterwards.

Q. So that you were acting under a misapprehension of the situation, were you?

A. Apparently, yes.

Q. That is obvious, because you did get up to Hunters Point with the propeller in the same condition? A. Yes.

Q. Do you know how long the "Fearless" is?

A. No, sir, I don't.

Q. Do you know, again, how long the tow-line was that you took out when you left the slip first?

A. I don't really know the length of it, I should judge 20 to 30 fathoms, something like that, I can't say exactly; 30 would give what the towboat would ask for, I don't really know the length of it.

Redirect Examination by Mr. FARWELL.

Q. Referring to the sketch that you have made, Claimant's Exhibit "A," is that a correct representation of the situation of the "Edith" at the time the third hawser parted, with reference to the distance that her bow was off the line of Pier 34, for instance?

(Deposition of Henry McDonald.)

A. Well, no, that is [77] not correct, it is simply—it is too close.

Q. And with reference to the “Edith” being half way between Piers 34 and 32, was the “Edith” in that position when the third line parted?

A. Well, I could not say about her being half way between the docks, but I judge she was 200 to 250 feet from Pier 32.

Mr. McGRANN.—I object to this endeavor to alter the witness’ testimony. If he does want to make a change in it I would like to have him indicate just what is wrong about it.

A. (Continued.) Of course this (referring to sketch) is not correct, I only made it approximate.

Q. How far off from the line of Pier 34 was the bow of the “Edith” when the third hawser parted?

A. That I could not very well say, I should judge we were not as far off as we were off Pier 42.

Q. Referring to the diagram of Mr. McGrann, the effect of the wind would be to set you in what direction with reference to the line of piers extending from Pier 46 to Pier 32?

A. We apparently went along the range of docks the same distance, when we are in here (indicating) the tide runs more in the direction of the docks than outside of it (indicating the bow not so close to the end of Pier 44).

Q. Do you think it would be apparent to the tow-boat [78] captain that if he cast off the tow-line that the effect of the wind and tide would be to drift you along parallel with the ends of the piers

(Deposition of Henry McDonald.)

Mr. McGRANN.—Objected to as leading.

A. No, I don't know, I could not say that.

Q. What do you think was the cause of this disaster?

Mr. McGRANN.—Objected to as calling for a conclusion. I think the captain can state the facts.

A. Getting the line in the wheel.

Q. And what was that caused by?

A. Caused by the towboat letting it go without any orders of any kind or even tooting his whistle.

Mr. McGRANN.—Same objection.

(By Mr. McGRANN.)

Q. Without prejudice to my objection to that question—you now admit that that was a misapprehension about the tow-line being afoul of the wheel?

A. A misapprehension about it being in the wheel?

Q. Yes. A. No, it was in the wheel.

Q. You concede now that your engines could have been moved?

A. That has the same effect on your mind as if it was not.

Q. Won't you concede that your engines could have been moved?

A. Anyone would have to concede that because it was done, but the effect on your mind is just the same, I should judge. [79]



*United States District Court, Southern District of  
New York.*

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,  
against

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Claimant.

Deposition taken in behalf of the libelant on the  
15th day of May, 1917, at the office of Messrs. Barry,  
Wainwright, Thacher & Symmers, 59 Wall Street,  
New York City, before a notary public.

Appearances:

Messrs. PILLSBURY, MADISON & SUTRO,  
Proctors for Libelant,

By Messrs. BARRY, WAINWRIGHT  
THACHER & SYMMERS, (Mr.  
PRIZER);

Messrs. McCUTCHEN, OLNEY & WILLARD,  
Proctors for Claimant,

By Messrs. KIRLIN, WOOLSEY & HICKOX  
(Mr. ERSKINE).

IT IS STIPULATED that the testimony may be  
taken pursuant to the annexed stipulation, by a  
stenographer, signing, filing and certification  
waived; stenographer's fees to be taxable. [80]

**Deposition of Sivert Hansen, for Libelant.**

SIVERT HANSEN, being duly sworn and examined as a witness for the libelant, testifies as follows:

(By Mr. PRIZER.)

Q. Your name is what?

A. Sivert Hansen.

Q. You hold a license?

A. I am a licensed mate, officer.

Q. You are a licensed mate? A. Yes.

Q. You hold first mate's papers? A. Yes.

Q. How long have you held them?

A. About three months.

Q. Before that you were?

A. Held second mate's certificate when I was in the "Edith."

Q. How long ago was that?

A. Last March I left her, it was the latter part of April I left.

Q. You were on board the "Edith" in March, 1916? A. Yes.

Q. You were second mate on the "Edith"?

A. Yes, sir.

Q. In March, 1916? A. Yes, sir.

Q. How long had you been second mate on the "Edith"?

A. I have been second mate from when she was new; I think it was April I left her when she came back out here from San Francisco.

Q. From the time she was put into the service until some time in April, you were her second mate?

(Deposition of Sivert Hansen.)

A. Yes.

Q. About how long had she been in service before the accident of March 4th?

A. 6 or 7 months.

Q. You remember the accident of March 4th?

A. Yes. [81]

Q. About what time in the day did the "Edith" leave her dock?

A. Between 3 and 4 o'clock.

Q. Where was she going?

A. She was going into drydock.

Q. What was the number of the pier she was lying alongside of? A. 46.

Q. She was bow in? A. Bow in, yes.

Q. What side of the vessel was against Pier 46?

A. Port side.

Q. And the starboard side was toward Pier 44?

A. Yes, sir.

Q. Which was on the other side of the slip?

A. Yes.

Q. Where were you stationed when the maneuver of leaving the dock was begun?

A. Aft on the poop.

Q. Where was the captain?

A. On the bridge.

Q. Where was the first mate?

A. On the fore-castle-head.

Q. Were you assisted by a tug? A. Yes, sir.

Q. What was the name of the tug?

A. The "Fearless."

(Deposition of Sivert Hansen.)

Q. What did the "Fearless" do first by way of pulling you out?

A. We just got a tow-line.

Q. From where?

A. From our port quarter, from our port stern.

Q. Was that the "Edith's" line? A. Yes, sir.

Q. Did you yourself pass it out? A. Yes, sir.

Q. You were in charge of the stern lines?

A. Yes, sir.

Q. And the "Fearless" took it?

A. The "Fearless" took it, yes. [82]

Q. What did the "Fearless" do?

A. The "Fearless" it went ahead with such a speed it broke it right away.

Q. Was it a good line?

A. A good line, yes, sir.

Q. Did you know its condition?

A. I know its condition.

Q. What, if any, signal had been given to the "Fearless" to go ahead?

A. Nobody gave any signals to go ahead; he went ahead himself.

Q. Had all the lines of the "Edith" been cast off then? A. No, there was a bow-line off.

Q. Had the stern-lines of the "Edith" been cast off?

A. The stern-lines was pulled in, they had a bow-line.

Q. What happened after the line broke?

A. We heaved the line and the ship was across.

Q. Which end of the ship drifted across?

(Deposition of Sivert Hansen.)

A. Stern first and then he slacked the bow-line.

Q. Who slacked the bow-line? A. The mate.

Q. She was drifting across the slip toward Pier 44? A. Yes, sir.

Q. Then what did you do about giving a new line to the "Fearless"?

A. We gave her the same line but the other end of it.

Q. The other end of the same line?

A. Yes, sir.

Q. What did the "Fearless" do then?

A. Went ahead and the captain went ahead a little with the engines; he went ahead a little too fast, so the old man he slowed [83] her down again.

Q. Who slowed her down? A. The captain.

Q. By putting the engines slow ahead?

A. Yes, sir.

Q. Then what happened?

A. Then we went out and coming out awhile he let go the stern line.

Q. Who let go the stern line?

A. The "Fearless" did.

Q. Had you given any signal to the "Fearless" to let go the stern-line? A. No, sir.

Q. Had the "Fearless" given any signal that she was going to let go the stern-line? A. No, sir.

Q. Did you know she was going to let go the stern-line? A. No, sir.

Q. Were you on the lookout as to what the "Fearless" was doing? A. Yes, sir.

Q. How far were you out at the time the "Fear-



(Deposition of Sivert Hansen.)

less" let go the stern-line?

A. About 30 or 40 feet.

Q. From what? A. From the dock.

Q. What end of the vessel was 30 or 40 feet from the dock? A. The bow.

Q. What did you do when you saw the "Fearless" had let go the stern-line?

A. Gave the signal to the captain to stop the engines.

Q. Did the captain stop the engines?

A. Yes, sir.

Q. Was it necessary to stop the engines?

A. Yes, because the line was foul. [84]

Q. What happened then?

A. She was drifting and he went around to the port side and got a bow-line and tried to get the bow off.

Q. Before the "Fearless" got around to the bow, did the "Edith" drift?

A. Oh, yes, she was drifting all right.

Q. Drifting slowly or rapidly?

A. She was drifting slowly first when she started and when she came to the tide and the wind, got out, she was drifting pretty fast then.

Q. How was the tide?

A. The tide was ebb.

Q. How was the wind?

A. About southeast, I should judge

Q. How much wind was there?

A. Strong wind.

Q. Which direction did you want to go?

(Deposition of Sivert Hansen.)

A. We want to go to the drydock.

Q. Was that toward Pier 32 or in the other direction?

A. It was in the opposite direction.

Q. Did you drift toward Pier 32?

A. Yes, sir.

Q. That was where you afterward struck, was it?

A. Yes.

Q. The claimant's answer states that at the time the line was cast off by the "Fearless" you were 700 feet away from the pier, is that so?     A. No, sir.

Q. You are sure of it?     A. Yes, sir.

Q. Are you sure you didn't give any signal to the [85] "Fearless" to cast off the line?

A. Positive; I am positively sure of that, no signals to let go.

Q. Are you positive that they gave you no signal that they were going to let go?     A. I am.

Q. Were you on the lookout?     A. Yes, sir.

Q. How soon after you saw that he had let go did you report to the captain?     A. Right away.

Q. How soon after that did the captain stop the engines?

A. He rang the telegraph right at once to give the signals.

Q. What, if any, head or sternway would you say the boat had at the time the engines were stopped?

A. Well, I think we had a little sternway; we might not; I can't exactly tell.

Q. Do you remember about how far the "Edith" was from Pier 32 when the last line broke?

(Deposition of Sivert Hansen.)

A. A little over 100 feet I should think.

Q. When you reached drydock did you notice the propeller? A. Oh, yes.

Q. What did you see?

A. I saw the end of the line around the shaft, around the wheel.

Q. Did you examine the condition of the line while you were at the drydock?

A. Yes, we was looking at it always.

Q. Did anybody else look at it there?

A. Yes, there [86] was a lawyer on board, there was two of them came on board.

Q. Was the lawyer of the tug aboard?

A. I don't know *what he were*, but he was aboard looking.

Q. How new a line was it?

A. Well, it was when the ship was new they came aboard; everything was new because it was a new ship about the last part of August and that line had not been used much because it was too heavy, they didn't use it except when we was in San Francisco and had to moor with that when they had a strong tide.

Q. When you had a strong tide?

A. In San Francisco; that is the reason we used it here to moor with.

Q. You have often seen vessels towed out by tugs?

A. Oh, yes, mostly every 2 weeks, 3 weeks, I see it.

Q. What is the custom with reference to casting off a line?

Mr. ERSKINE.—Objected to as immaterial and

(Deposition of Sivert Hansen.)

irrelevant on the ground that the witness is not qualified to testify as to what the custom is.

A. Well, gives us a short blast of the whistle to draw our attention if he want more line or if he want the line hauled in.

Q. You say the custom is to give a short blast of the whistle if they want you to haul the line in?

A. Sure.

Q. Are you sure they did not give any blast at this time? A. Yes, sir. [87]

Q. The answer in this case states that you had the line partly pulled in when he let go, is that true?

A. No, sir, we hadn't touched it when he let go; there was nobody knows he let go even.

Cross-examination by Mr. ERSKINE.

Q. Mate, were you on deck when the tug arrived alongside that afternoon? A. Yes, sir.

Q. How long did the tug have to wait before you were ready to start out?

A. He wasn't waiting long; we was ready when he come to give him the line.

Q. Just what was done after he arrived?

A. After he arrived he got a tow-line and he—

Q. What did he do, come up alongside and then make a turn? A. He made several turns.

Q. Before he got his line?

A. No, after he got a line he made several turns there back and forth and then he went ahead and broke the line he got.

Q. When he first came up where were you?

A. Out on the poop.

(Deposition of Sivert Hansen.)

Q. Waiting for him; how did you happen to be on the poop?

A. Because we was all ready for him.

Q. When had you gone on the poop?

A. I come on the poop when we was going to leave the dock.

Q. You were not going to leave until the tug came, were you? A. No, sir. [88]

Q. Did you go on the poop before the tug came?

A. As soon as we saw him we have the station.

Q. You didn't go until you saw her come?

A. No.

Q. You were on the poop when she got there?

A. Yes.

Q. Who did he talk to when he came alongside, the master of the tug?

A. I don't know whether he talked to the master or not, I think he did.

Q. Do you know what they said?

A. No, I don't.

Q. Was anything said about your giving them a line; who told you to give them a line?

A. We was told to give him a line.

Q. Who told you to?

A. The captain of the tug.

Q. What did he say?

A. He sung out to give him a tow-line and we gave him one and he said, Make fast.

Q. Where was the tug when he said that?

A. He lay astern.

Q. Right under your stern?



(Deposition of Sivert Hansen.)

A. No, he was a little way from us.

Q. How was he lying, with his stern or bow to your stern?

A. He was lying with his bow out pretty near.

Q. His stern toward your stern? A. Yes.

Q. How did you pass the line to him?

A. Passed over the stern with a little line.

Q. Did you have anyone on the poop helping you?

A. 3 or 4 men. [89]

Q. How much line did you put out to him?

A. About 20 or 30 fathom, I should think.

Q. Did the end of the line that you gave him have an eye on it? A. Yes.

Q. After you paid out the 20 or 30 fathoms how did you make the line fast to your boat?

A. Around the bitts.

Q. Flat cleats or upright bitts?

A. Upright bitts.

Q. Two, in pairs?

A. Two, in pairs, yes, sir.

Q. What bitts did you make the line fast to?

A. One the port side.

Q. You didn't personally handle the line?

A. No, I don't handle it; I have 3 or 4 men to handle it.

Q. Did you see how they made it fast? A. Yes.

Q. How many turns did they put on it?

A. I couldn't say how many turns they put on it but I know it was fast.

Q. Did the men stand by the line?

A. Yes, all they had to.

(Deposition of Sivert Hansen.)

Q. To haul in the line?

A. After they make it fast they don't have to hold it.

Q. They don't stand by ready to cast off if anything should happen?

A. Oh, no, they had a line out to the tug and that is fastened.

Q. What signal did you intend to give the tug when you were ready to go?

A. I didn't give her any signals at all. [90]

Q. How was the tug to know that he was ready?

A. Our master does that.

Q. What was the master going to do?

Mr. PRIZER.—Objected to.

A. The master he gives the tug the order when he want him to go.

Q. How does he give it?

Mr. PRIZER.—I object to that as not within the knowledge of the witness.

A. Well, that ain't up to me; I get my orders from the master and he is in charge.

Q. You said you expected the tug to get orders from the master? A. Yes.

Q. How were you expecting the master of your ship—he was on the bridge, isn't that right?

A. Yes.

Q. How did you expect the master on the bridge of your ship to give an order to the tug to go ahead?

A. By the whistle.

Q. What whistle would he make?

(Deposition of Sivert Hansen.)

A. That depends on which way they make it out between them.

Q. What?

A. They make that out between them what kind of a whistle they are going to use.

Q. They usually agree on what the signal shall be?

A. Yes.

Q. When the tug started to haul on that line you say [91] the stern lines of your ship were all right? A. Yes, I pulled them in.

Q. From where you were standing could you see the bow-line? A. Yes.

Q. How long is your ship?

A. The ship is three hundred and some feet, I think; 325 I think it is.

Q. The ship was light, was it?

A. The ship was light, yes, sir.

Q. How high was the poop-deck on which you were standing above the water level?

A. It must be about 25 feet I think.

Q. Then you were considerably above the tug's deck? A. Oh, yes.

Q. You could see everything that was going on on the tug's deck? A. Yes, sir.

Q. How far was the stern of the tug from your stern when you passed out that line; how far did you have to heave it?

A. It wasn't very far then, 4 or 5 fathoms I should think.

Q. How did you pay out 20 or 30 fathoms, did the tug move ahead to take the whole length of the line?

(Deposition of Sivert Hansen.)

A. He was moving the tug and we paid out the line until he said, Make fast.

Q. Paying out your line was a gradual process, was it? A. Yes, we didn't leave it go at once.

Q. When did you decide to stop paying out line?  
[92]

A. When the tug captain sung out to make fast.

Q. Where was he when he sung out to make fast?

A. He was standing just outside the wheelhouse.

Q. I mean, where was the stern of the tug off your stern? A. The tug was a little down the slip.

Q. Toward your starboard quarter?

A. Away from our starboard quarter.

Q. How far astern of it, the full 30 fathoms?

A. No, it wasn't that much; 15 or 20 fathom I should say.

Q. When had you paid out your stern line, how long before you made your towing line fast to the tug?

A. Well, we made our towing line fast to the tug before we pulled our stern lines in.

Q. You made your towing line fast and then you pulled in your stern line? A. Sure.

Q. How long after that was it that the tug started to pull? A. Right away.

Q. Just after you got in the stern line? A. Yes.

Q. When the tug started to pull, can you give me some idea how long that was from the time you first began to make preparations to heave out this line to him after he had talked with your captain,—several minutes, wasn't it?

(Deposition of Sivert Hansen.)

A. I don't know how long it was he was talking to him, how long a time it was after.

Q. From the time that he came up and talked to your [93] captain until he started to pull?

A. It wasn't long.

Q. About how long?

A. 6 or 7 minutes, I think, something like that.

Q. When the first line broke, do you know where the break was?

A. I think it was right over his stern.

Q. Right at his stern?     A. I think it was, yes.

Q. That would be a short distance back from the eye on the line?     A. Yes, sir.

Q. You said you had been using this line for mooring purposes?     A. Yes, sir.

Q. When you used that line for mooring purposes, where would you usually put that eye, on the dock?

A. On the dock.

Q. When you were not using that line on board the ship, where was it kept?

A. It was kept down underneath the poop.

Q. On the poop-deck?

A. No, underneath, inside.

Q. How long a line was it?

A. A long line, I think it was a full cable, 120 fathoms.

Q. Do you remember when you had last used it before this occasion?

A. No, we never used it between San Francisco; we only used it when we was at San Francisco.

Q. When had you last been at San Francisco be-



(Deposition of Sivert Hansen.)

fore this accident? A. Within a month.

Q. Been there about a month before?

A. Yes. [94]

Q. And that was the last time you had used this line? A. Yes.

Q. When was it brought up on the poop-deck on this occasion?

A. The day before we came into port.

Q. Then it was left on the deck there so that you could use it?

A. Sure, we get all the lines out before we get in.

Q. Curled up on the poop-deck? A. Yes, sir.

Q. How long had you been in port?

A. 5 or 6 days.

Q. The lines were lying on the poop-deck there?

A. Yes.

Q. Had you handled it during that time?

A. No, we didn't need it for mooring in port.

Q. Had you personally handled it?

A. Yes, I handled it right along.

Q. When did you handle it, you personally, in your own hands?

A. I had a hold of the lines all the time.

Q. I thought you said a little while ago that the seamen handled the lines?

A. Yes, they handle it but I got to—

Q. You direct them? A. Certainly.

Q. But you didn't put out the lines with your own hands, did you? A. No.

Q. You didn't actually handle this line yourself?

A. I handled it many times, all of them, three or

(Deposition of Sivert Hansen.)

four [95] times; we was all looking at them.

Q. After it was put on deck the day before you arrived in port, you didn't handle this line?

A. I didn't take it up myself, no.

Q. Had you ever used this line for towing before?

A. No, we never had a tug before.

Q. Now, after the ship drifted across the slip, as I understand, you started all over again, is that it, passed the line out again?

A. Passed the same line, the other end.

Q. Was there an eye on the other end?

A. Yes, sir.

Q. An eye on each end?      A. Yes, sir.

Q. The end that broke first was the end that you had been used to mooring on the dock with I understood you to say?

A. Oh, no, I didn't say that at all; sometimes we used one end and other times we used the other end; we didn't pay the same end all the time, we swung it over.

Q. It is not customary to have an eye on each end of these lines, is it?      A. Yes, sir.

Q. On a 120 fathom line?

A. If you don't cut them in the middle; if you cut them in the middle you have two eyes on them.

Q. Where was the tug when you passed the other end of the line out to him?

A. About astern of us then. [96]

Q. How far astern?      A. Oh, not far.

Q. Did you use a heaving line to get it to him?

A. We always use a heaving line.

(Deposition of Sivert Hansen.)

Q. How much did you pay out the second time?

A. I should say 30 fathoms or so.

Q. What bits did you make fast to the second time? A. Starboard.

Q. That was the other bitt? A. Yes, sir.

Q. What difference was it—why did you use the other bitt?

A. Because we gave him the line from the other side, the first line from the port side and the second line was from the starboard side.

Q. After that line was made fast you started to back out? A. Yes, sir.

Q. Using your engines to help back, is that right?

A. Yes.

Q. Did you hear the signals given to the engines from where you were standing?

A. Yes, I could hear the signals.

Q. Can you describe what they were?

A. Yes, *there* was astern.

Q. How much of the wheel was out of the water?

A. A good foot, a foot and a half maybe; we didn't measure how much was out, of the wheel.

Q. I don't expect you to give it to me in inches, but roughly speaking how much?

A. Over a foot. [97]

Q. Do you know anything about the size of the wheel? A. No, I don't, no, sir.

Q. Do you know what the draft was on this occasion? A. I don't remember that.

Q. You don't know what her draft loaded is?

A. Yes.

(Deposition of Sivert Hansen.)

Q. What is that?

A. 21 foot 6 when she was deep loaded; 21 most of the time.

Q. From the time that the steamer started to use her engines to back out, do you know what was done with the engines up till the time that the tow-line was cast off?

A. Yes, he stopped and put her ahead again; she was going too fast.

Q. Where was the bow of the ship when he stopped and went ahead?

A. She was scratching along the side of the pier, I can't say.

Q. Then after going ahead so as to slow down the steamship, what was done with the engines?

A. I suppose the engines went slow awhile and then stopped, went down, I suppose, stopped her, I don't—

Q. Did he reverse her again or leave them dead after that?     A. I don't know.

Q. How were the engines moving when the tow-line was cast off?

A. I think the engines was moving ahead.

Q. Had they been stopped before that?

A. The engines stopped before that—I think they did. [98]

Q. What I want to get at is this: you said that as the steamer was coming out the engine went ahead so as to slow down the speed; was that the movement that she was making when the line was cast off?

A. That was long before the line was cast off.

(Deposition of Sivert Hansen.)

Q. Between that forward movement and the last forward movement he had stopped the engines?

A. That I don't know if he stopped; I think he was going slow ahead.

Q. All the time up to the time the line was cast off?

A. I think he was.

Q. Did the tug stop her engines before it cast off the line? A. I don't know what the tug did.

Q. Couldn't you tell from her quick water whether her wheel was moving or not?

A. When I saw them leave go the line I have something else to look at except whether she was moving; we had to get the line in to get clear.

Q. How much slack was there in the line before it was cast off?

A. There was the whole length of the line when I saw him leave it go, the whole length of the line.

Q. If the tug had the eye over the bitt could it cast the eye off with a stretch on the line?

A. That is up to him; he got charge of the line.

Q. What did he do, slow down and slacken it?

A. He must slacken it; sometimes they take a turn around the bitt. [99]

Q. You said that you could see the tug; couldn't you see what was being done?

A. I could see the tug but I wasn't watching what he was doing with the line.

Q. What were you watching?

A. I was watching to see if we was going to get out; we have got the fenders to look out for.



(Deposition of Sivert Hansen.)

Q. Your duty on the stern is to keep an eye on the towing line?

A. But we are not supposed to watch the tug too; he is supposed to give us a signal what to do.

Q. Who is? A. The tug captain.

Q. What signal did you expect the tug to give?

A. I expected the tug captain to blow a short blast the same as the rest of them do.

Q. Had you ever been towed by that tug before?

A. No.

Q. Did you ever have any conversation with her master before starting out as to what signals he would give you? A. No, sir.

Q. Where was the line when you noticed that the tug was going to cast off?

A. The line was right on her port quarter.

Q. On your port quarter?

A. Yes; my stern line was cast off.

Q. Where had you been looking just before that?

A. I don't know just before that.

Q. Where were you standing so that you did not see [100] the line actually cast off the tug?

A. I was around the poop.

Q. Which side?

A. Well, I can't say which side I was on; I was always walking from one side to another; I suppose I was on the side next to the dock to see that we didn't do any damage to the docks, nor anything.

Q. The line was around your port quarter when you first saw it? A. Yes, sir.

Q. And then you signaled to your captain to stop?

(Deposition of Sivert Hansen.)

A. I signaled to the captain and he signaled to stop.

Q. I understood you to say that he telegraphed at once?

A. He telegraphed at once to stop the engines.

Q. How did you know the line was afoul of the wheel?

A. I didn't know the line was foul of the wheel, but I knew it would be foul; the wheel was moving and the line was in the water and I knew it would be foul.

Q. As far as you can say, you don't know when the line got on the wheel?

A. No, I don't know; of course we heaved her right in.

Q. All you know is you saw the line on the wheel when you got to drydock?      A. Yes.

Q. How did you happen to know how far the bow of your ship was away from the pier when this line was cast off?

A. I judge how far it was off; of course it was off a few fathom; nobody could say. [101]

Q. How did you happen to notice it; weren't you looking at the line?

A. No, I was looking over the side because I saw there was something going to happen.

Q. After this second line was cast off, after you signaled to the master to stop the engines, did you remain on the poop until the time of the collision?

A. Yes, sir, right on the poop.

(Deposition of Sivert Hansen.)

Q. You don't know what happened up at the bow then?

A. No, I don't know what happened up at the bow, more than the mate told me.

Q. What kind of anchors did you have on board the ship? A. Patent anchors.

Q. How much did they weigh?

A. Those patent anchors were a good-sized anchor; I couldn't say exactly how much they weigh.

Q. About how much?

A. About a ton and a half.

Q. What do you have to do to put out those anchors? A. Have to open the brake and—

Q. Clear the brake base and they go out?

A. Oh, yes.

Q. Do you know what pier the ship was off when the tug cast off the tow-line?

A. She was off 44 then.

Q. Now you were looking over the side of the ship just prior to the time that the line was cast off, and you didn't see the line cast off the tug?

A. No, I didn't see the line cast off. [102]

Q. Do you know how long it was from that moment when you first saw the line until you last noticed it on the tug; in other words, how long had you been looking over the other side of the ship?

A. For a minute or longer, I couldn't say exactly.

Q. Whatever period it was, you didn't know what was going on as far as the line was concerned?

A. Oh, no, I know the tug was going ahead, that is all.

(Deposition of Sivert Hansen.)

Q. It was going ahead when you last saw it?

A. Yes.

Q. But whether the tug stopped and slackened up the line, you don't know? A. No.

Q. And you don't know what happened on your ship? A. No.

Q. I want to know just what you saw; if you were looking over the other side of the ship, you didn't see what was the condition of the line?

A. No, I didn't see them let got the line, no.

Redirect Examination by Mr. PRIZER.

Q. Did you notice the tug after they let go the line?

A. No, sir—I saw the line was loose, oh, yes.

Q. You were paying general attention to the line?

A. Oh, I pay attention to the line, yes, of course when we give the tug the line we don't stay and keep our eyes on that line; we have got something else to do; [103] if he want more line he give us notice and if he want the line hauled in he leave us know.

Q. You were not giving him orders?

A. No, sir.

Q. Do you remember when the tug took the third line?

A. I know we went forward and got a line from the mate.

Q. Did you hear the captain of the tug give any orders to the captain of your boat? A. No.

Q. You didn't hear him make any suggestions to the captain of your boat? A. No, not there.

Q. When you first took your position on the poop-

(Deposition of Sivert Hansen.)

deck before the first line was put out, who told you to take your position?   A. The mate tells us.

Q. Did the first mate tell you?

A. Oh, yes, we get orders from the first mate when we are going to leave the dock and I get my gang out and he gets his gang.

Q. You did it when the first mate told you to?

A. Yes.

Q. What had you been doing before that?

A. We was on the deck at different jobs; we don't remember what kind of work we do a year ago; on board ship there are many kinds of work during the day.

Recross-examination by Mr. ERSKINE.

Q. You were down a little bit more by the stern than by the bow at that time?

A. Oh, yes, he always is. [104]

Q. About how much more, do you know?

A. That I couldn't exactly say.

Q. Have you any idea how much freeboard the ship had amidships?

A. No, I don't; she was empty, she had all the freeboard.

Q. About how far would her main deck be above the water line in the condition she was in then?

A. The main deck would be about 16 feet, I should think; no, 14 or 15 feet anyhow. [105]



*In the United States District Court in and for the  
Northern District of California, First Division.*

IN ADMIRALTY.—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Stipulation for Taking Deposition.**

IT IS HEREBY STIPULATED, by and between the undersigned proctors for the respective parties in the above-entitled cause, that the depositions of Henry McDonald and S. Hansen may be taken at 59 Wall Street, in the City of New York, State of New York, before A. G. Charles, a Notary Public, as a Commissioner without the issuance of a commission for that purpose upon this stipulation, at such time or times as may be mutually agreed upon by the eastern legal representatives of the undersigned proctors, to wit: Barry, Wainwright, Thacher & Symmers, of the City of New York, the legal representatives of the proctors for the libelant in the above-entitled cause, and Kirlin, Woolsey & Hickox, of the City of New York, the legal representatives of the

proctors for the respondent and claimant in the above-entitled cause.

AND IT IS FURTHER STIPULATED that upon the completion of the taking of said depositions, the same shall be, by said notary public, returned to the United States District Court, in and for the Northern District of California, First Division, and may be offered in evidence on behalf of any of said parties [106] to the above-entitled cause, subject to objections as to the materiality, relevancy or competency of the same.

Dated the 6th day of March, 1917.

PILLSBURY, MADISON & SUTRO,

Proctors for Libelant.

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent and Claimant.

Depositions of witnesses Henry McDonald & Sivert Hansen taken and returned attached hereto.

May 19, 1917.

A. C. CHARLES,

Notary Public, New York County.

[Endorsed]: Filed May 24, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [107]

*In the United States District Court for the Southern  
Division of the Northern District of California,  
First Divison.*

Before: Hon. MAURICE T. DOOLING, Judge.

No. 16,031.

A. H. BULL & COMPANY, INC., a Corporaton,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
etc.,

Respondent,

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation,

Claimant.

### **Testimony Taken in Open Court.**

Tuesday, June 5, 1917.

Counsel Appearing:

For the Libelant: OSCAR SUTRO, Esq.

For the Claimant: IRA A. CAMPBELL, Esq.

Mr. SUTRO.—If your Honor please, I will read the libel; it is not very long. Omitting the formal allegation of the corporate capacity and ownership, which was admitted, it reads: (Thereupon counsel reads the libel and answer.)

There are two depositions in this case. I don't know what your Honor's feeling is about them.

The COURT.—Just introduce them.

Mr. SUTRO.—They are the depositions of Captain McDonald and the mate, Hanson. There are no objections in the examination that you care to

urge, are there, Mr. Campbell?

Mr. CAMPBELL.—No.

Mr. SUTRO.—There are none that we care to urge. The depositions [108] were taken on stipulation and there is no objection to their introduction in evidence.

I have obtained from the United States Weather Bureau a transcript of their records on March 4, 1916. Will you permit that to be used as showing the state of the wind, Mr. Campbell?

Mr. CAMPBELL.—That record is taken of course on the top of the Merchants' Exchange Building, and not down along the water front.

Mr. SUTRO.—We understood that the conditions would be about the same, with some slight variations.

Mr. CAMPBELL.—I would not stipulate to that. Your master has already testified to the velocity, which he estimated as 8 Beaufort scale, and the Weather Bureau could give you what that velocity of wind is.

Mr. SUTRO.—It is the only available record of the wind on that day, and it shows the wind between 3 and 4 o'clock was 18 miles, southeast.

Mr. CAMPBELL.—I have no objection to the record, as to what it purports to show.

Mr. SUTRO.—May it be stipulated that the tide which I took as of at Mission street and not at Fort Point, high water at 12:06 P. M. and low water 6:17 P. M.; that would be about a three-quarter ebb tide.

Mr. CAMPBELL.—I have not looked at the statements of the tide, but you say you have examined them?

Mr. SUTRO.—Yes.

The COURT.—I suppose this testimony will be transcribed?

Mr. CAMPBELL.—Yes.

Mr. SUTRO.—That would be about a two or three knot tide, as I understand it.

Mr. CAMPBELL.—I don't know anything about that. [109]

Mr. SUTRO.—I have only one more witness, and that is the surveyor of the damage of this vessel, after she was damaged, and who superintended her repairs. He will be here this morning, and Mr. Campbell said he would proceed with his witnesses.

The COURT.—If it be a fact that the vessel was damaged, the damage will not be inquired into at this time, unless there is any special reason for it.

Mr. SUTRO.—It may not be controverted, but the fact is that the propeller of the "Edith" was fouled with this line when it was cast off by the tug, which caused her to stop her engines, and that is why she drifted; the surveyor who superintended the repairs saw the vessel on the drydock and saw the wheel fouled. That is the only other point I care to clear up. That may not be controverted.

Mr. CAMPBELL.—That is not going to be controverted; we have the superintendent of the drydock here; he also saw the lines.

The COURT.—Then it is not controverted that the line did foul the wheel?

Mr. CAMPBELL.—It is not controverted that the line was around the wheel when she arrived at Hunter's Point Drydock.



The COURT.—That is what you expected to prove?

Mr. SUTRO.—I expected to prove—

Mr. CAMPBELL.—I don't care to stipulate to what the fact was in that connection because I have a man here who actually took it off the wheel.

Mr. SUTRO.—That is the libelant's case at this time.

Mr. CAMPBELL.—I may have to put my case in a little out of order, for the reason that ordinarily I would start with the master of the tug, but he has been delayed at sea, coming up the coast, and will probably not arrive until sometime after twelve o'clock to-day, so I will have to call other witnesses.

[110]

Mr. SUTRO.—There is one other matter. The charter parties are due here to-day—but the Court has already ruled that is a matter of damages.

Mr. CAMPBELL.—All right.

**Testimony of John Hubacher, for Claimant.**

JOHN HUBACHER, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Mr. Hubacher, what is your position, what do you do?

A. I am superintendent of the drydock at Hunter's Point.

Q. And for how many years have you been superintendent of that drydock?

A. Four or five years, I guess.

Q. How many years have you been out at the Hunter's Point drydock?

(Testimony of John Hubacher.)

A. I started out there in 1878.

Q. 1878? A. Yes.

Q. Were you connected with Hunter's Point Dry-dock on March 4, 1916, at the time the steamer "Edith" docked there? A. Yes.

Q. What was your position then?

A. I was superintendent of the dock and docking of ships.

Q. Did you have anything to do with the docking of the steamer "Edith" on that afternoon?

A. Yes, I docked her.

Q. After she was in dock, and the dock had been drained, did you observe whether or not there was a line in her wheel? A. I did.

Q. Was there? A. There was.

Q. Did you examine that wheel to determine how it was fastened in the wheel?

A. I did not examine it. I just merely looked at it.

Q. You looked at it? A. Yes.

Q. Is that line still preserved? A. Yes.

Q. Where is it?

A. We brought it over this morning from Hunter's Point in a car and left it down here. [111]

Q. Down in front of the building? A. Yes.

Q. How large a line is it?

A. I judge it is an 8-inch line, I think.

Q. In how many pieces is the line? A. 2 pieces.

Q. What are the approximate lengths of the two pieces?

A. One of them is in the neighborhood of 18 feet

(Testimony of John Hubacher.)

and the other is something like 30 or 33 feet long.

Q. Now, can you take this model of the stern of a vessel, and show the Court—first I want you to tell me how you saw the line in the wheel. Just describe it so that we can get it in the record.

A. I was on top of the dock and was looking down on the wheel, and the way the engines were stopped at that time the line was wrapped around one of the blades on the port side.

Q. On one of the blades on the port side?

A. Yes; otherwise, just the way this wheel is there now; the line was wrapped around on this blade there.

Mr. SUTRO.—Pointing to the blade on the port side.

A. Yes. On the port side.

Mr. CAMPBELL.—Can you tell now the number of turns that there were around the blade?

A. No, I could not tell you about that.

Q. Did you observe as to whether or not there was an eye in the line at the end of the line?

A. Yes, there was one eye.

Q. Can you tell us with respect to the eye what part of the line it was that was wrapped around the blade?

A. The eye was wrapped around it and the fag end was hanging loose, I should judge about six feet off the blade, hanging down.

Q. Was there any part of the line that was wrapped around the shaft?     A. No.

Q. Or the hub?     A. No.

(Testimony of John Hubacher.)

Q. Will you just take this string that I have here with the eye [112] in the end of it, and just show to the Court how you observed it to be wrapped around that propeller?

A. As near as I can remember, there was about five or six feet hanging loose.

The COURT.—Of the end of the line?

A. Of the end of the line.

Q. And the eye hung down?

A. The eye was wrapped around tight on there.

Q. The eye was wrapped around tight?

A. Yes. That was, I should judge, about a foot or two off of the hub.

Q. That was the whole line, of two pieces?

A. That was the two pieces.

Mr. SUTRO.—Q. It was in two pieces on the hub?

A. Two pieces.

The COURT.—When unwrapped, it was found to be in two pieces? A. Yes.

Mr. CAMPBELL.—Q. Was the line cut in clearing it from the wheel? Did you have to cut it away from the wheel?

A. I had nothing to do with that. I did not even see them take it off.

Mr. CAMPBELL.—We will have the line brought up to court if you want it; it is a very bulky piece.

Mr. SUTRO.—I don't know that it is worth while; the Court knows what an 8-inch line is, unless the Court wants to see it.

The COURT.—No.

(Testimony of John Hubacher.)

Cross-examination.

Mr. SUTRO.—Q. You say, as I judge from your illustration there, the line was pretty well wrapped around the blade of the propeller?

A. Yes, it was wrapped on one blade.

Q. Evidently it had made several turns on it?

A. Oh, yes, quite a number of turns.

Q. Give me again the distance from the shaft to the nearest part [113] of the line?

A. I could not, exactly.

Q. You said about a foot?

A. A foot or two, in that neighborhood.

Q. How big a propeller was that, about, as near as you remember it?

A. I could not say; I suppose about a 16-foot or 18-foot propeller, something like that.

Q. 16 or 18-foot propeller? A. Yes.

Q. Then the line was really pretty close to the hub, was it not? A. Yes, within a foot or two.

The COURT.—What do you mean by 16 or 18-foot propeller?

A. That is the outside diameter of the blades.

Q. Of each blade?

A. No, the extreme end like this.

Q. And a single blade would be one-half that?

A. Less the hub.

Mr. CAMPBELL.—No portion of the line was wrapped around this shaft or stern bearing?

A. No.

The COURT.—You saw the line afterwards, after it had been removed? A. Yes.



(Testimony of John Hubacher.)

Q. And it was then in two pieces? A. Yes.

Mr. CAMPBELL.—Q. You have preserved it yourself?

A. I preserved that and kept the line in a shed over there till this morning.

Q. Did you observe the ship coming to the dry-dock? A. Yes.

Q. Was she under tow of the tug or under her own steam?

A. A towboat had a headline towing her in up to the dock.

Q. But before that—

Mr. SUTRO.—The master testified she came in under her own steam, after he crashed into the pier and found that his engine would turn, he went up under his own steam.

Mr. CAMPBELL.—I see Mr. Brackett here now.

Mr. SUTRO.—In view of the testimony, I don't know as we will want him. There is only one other point, Mr. Campbell. [114] It may be conceded, or if you wish we will prove it. This is a right hand screw?

Mr. BRACKETT.—To the best of my recollection it was a right hand screw.

Mr. CAMPBELL.—It is conceded it is a right hand screw.

### **Testimony of George W. Driver, for Claimant.**

GEORGE W. DRIVER, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Your business is what?

(Testimony of George W. Driver.)

A. Marine engineer.

Q. Are you now in the employ of the Shipowners & Merchants Tugboat Company?   A. Yes.

Q. In what capacity—marine engineer?

A. Chief engineer of the tug “Fearless.”

Q. Of the tug “Fearless”?

A. Yes.

Q. Were you the chief engineer of the tug “Fearless” on March 4, 1916, at the time of this accident to the “Edith”?

A. Yes.

Q. Who handled the engines of the “Fearless” during that towage service?

A. I did.

Q. In what line of work is the tug “Fearless” used?

A. In towing vessels and assisting vessels, docking.

Q. Over what waters do you tow?

A. Well, the bay and river; at the present time we are on the outside, towing outside.

Q. From where?

A. From San Francisco to Port San Luis.

Q. What I am getting at, is she strictly a bay tug, or is she an ocean-going tug and bay tug?

A. She is a combination; she is combined; she does both work, inside and outside.

Q. Now, where is the engine-room on that tug?

A. Aft.

Q. Is there a house on the tug?

A. Yes.

Q. Is the engine-room at the extreme end of the house?

A. Yes.

Q. Is there any cabin or room between the after end of the engine-room and the stern of the tug?

(Testimony of George W. Driver.)

A. No. [115]

Q. On which side of the engine do you work it?

A. Port side.

Q. That is where your throttle and reversing levers are? A. Yes.

Q. And standing at the throttle, is there any way that you can look back over the stern of the tug?

A. Yes, I have windows all around.

Q. Windows all around? A. Yes.

Q. In handling the engines of a tug when she is maneuvering with a tow in a harbor like San Francisco, what is your practice as to watching the maneuvers of the tug through those windows?

Mr. SUTRO.—We object to that. He can tell what he did in this instance.

The COURT.—Let him tell what he did at this time.

Mr. CAMPBELL.—Do you recall about what time of day it was when you went down to this work?

A. Yes.

Q. What time was it?

A. In the afternoon, in the neighborhood of three o'clock.

Q. What was the condition of the weather?

A. Well, strong wind, heavy sea and ebb tide.

Q. Where did you find the "Edith" moored?

A. At Pier 46, north side.

Q. Which side? A. North side.

Q. What was done with your tug when you arrived there?

A. When we arrived there we backed in and

(Testimony of George W. Driver.)

waited for a line, and then we received a line—

The COURT.—How did she lie, what side to the pier? A. The north side of the pier.

Q. What side of the vessel to the pier?

A. Did the boat lie?

Q. Yes.

A. The towboat laid off of the starboard side, the towboat.

Q. I mean the vessel, how did the vessel lie at the pier; what [116] side was next to the pier?

A. The north side of the pier.

Mr. CAMPBELL.—Q. Which side of the “Edith” was next to the dock? A. The port side.

Mr. SUTRO.—She was in like this, wasn't she (pointing to diagram)?

A. Yes, just in that neighborhood.

Mr. CAMPBELL.—Q. Go ahead and tell us just what happened from that time on, as you observed it.

A. We backed in to Pier 46, to the “Edith,” to the stern of the “Edith,” and received a line from her, from our stern to her stern, and when they gave orders that she was ready for casting off the line, we started to pull her out.

Mr. SUTRO.—Q. When who gave orders?

A. The captain of the “Edith,” to our captain.

Mr. CAMPBELL.—Go ahead and continue the storm.

A. As we pulled out, she began to back, but in the meantime as we got a strain on the line *the line*, the line that we had, the stern line that we had pulling

(Testimony of George W. Driver.)

her out, parted, and she drifted on down to Pier 44.

Q. Whereabouts did that line part, did you see?

A. No, I could not see; I think near the boat—

Mr. SUTRO.—You could not see it, could you?

A. No, it was too close down.

Q. You could not see it—

Mr. CAMPBELL.—If you have any objection, address it to the Court and not to the witness, and we will get along better.

Q. When that line parted, how was the engine of your tug working?

A. Under one bell, that is slow, moderate speed.

Q. In working the engines when you are starting a strain on a line of that sort, how do you do it—how did you do it on this day?

A. We picked up until the line is taut, and then pulled.

Q. Will you state to the Court as to whether or not you did on this [117] day jump or jerk on that line?

A. No; as we ordinarily do, pick up the line until we have got a strain on it and then pull under one bell until we get other signals.

Q. When the line parted, what did the "Edith" do? A. She drifted down on to Pier 44.

Q. On to the southerly side of Pier 44?

A. The southerly side, yes.

Q. Then what was done?

A. Then we got another line off of her and then started to pull on it and got her clear, clear of the dock, in the neighborhood of 750 feet or 700 feet, and



(Testimony of George W. Driver.)

our captain signalled to the man on the stern of the "Edith" to haul in his line; one of our deckhands held the line until the "Edith" had started ahead, and could not hold on to it any more.

Q. What deck-hand was that?

A. Kraatz, I think his name is.

Q. He is here in court?      A. Yes.

Q. After the deck-hand let go of that line, what was done with your tug?

A. We went around to the bow to pick up a headline.

Q. On which side did you pass the "Edith"?

A. The port side.

Q. The port side, or starboard side?

A. No, we landed on the port side.

Q. When you went around the "Edith"?

A. We went around the starboard side, and when we got her line it was off the port side—we took a line from the starboard and we run it off to the port side, on pulling on the line.

Q. You ran around the starboard side and took a line from the port?

A. We took a line from the starboard, and we ran it off to the port side, on pulling on the line.

Mr. CAMPBELL.—Q. When you went around, you went around on the starboard side of the "Edith"?      A. Yes.

Q. And you took a line from the bow of the "Edith" on the "Edith's" [118] starboard side?

A. Yes.

Q. When you started to pull on that line, where

(Testimony of George W. Driver.)

was your tug then with respect to the "Edith"?

A. Then we pulled off of the port side.

Q. How was your tug heading with respect to the heading of the "Edith"?

A. We were off at an angle; the "Edith" was like this and we were off at an angle this way, to pull her up toward Hunter's Point, to pull her up in around here.

Q. What did you observe as you started to pull on that line?

A. The line surged; it was not made fast.

Q. What do you mean by "surged"?

A. Gave out, played out; it was not made fast on the boat, and we had to stop our engines.

Q. Just a moment; it surged where, on your tug?

A. Oh, no, on the "Edith."

Q. Then what?

A. When we saw that we had to stop our engines for them to make it fast on the "Edith," and when we did so we then got a strain on it and by the time we got a strain on it the line parted, the rotten line.

Q. When you were pulling on that line, at the time it parted, how were you pulling?

A. Under one bell, moderate speed, after I got the strain on her.

Q. How did you pick up the strain on that?

A. The same as I always do, very gently, until the strain comes on her, and then pull up under one bell.

Q. Standing at the throttle, or standing in your engine-room where you did, will you state whether or not you could see this line as it led from the tug

(Testimony of George W. Driver.)

to the "Edith"? A. Yes.

Q. Will you state whether or not at any time you jerked or jumped upon that line? A. No.

Q. After that line parted, what became of the "Edith"? What happened from then on?

A. She drifted down, then, to Pier [119] 32 and touched Pier 32—you mean the head-line?

Q. Yes.

A. She drifted down to Pier 32 and touched Pier 32 and came around on the side, facing on the end of the dock, and by the time she came around facing Pier 32 they started the engines running ahead.

Q. She came down on the corner of Pier 32, and swung around broadside? A. Yes.

Q. What became of the "Edith" after that?

A. She started up ahead with her engines and we followed along until we got up to Hunter's Point and then gave her a line.

Q. Did you have a line to her at any time between her leaving Pier 32 and reaching Hunter's Point drydock? A. No.

Q. Where did you follow along with the tug, behind?

A. We followed right along, about amidships—perhaps a little further aft than amidships.

Q. When you got to Hunter's Point Drydock, did you put her in the dock? A. Yes.

Cross-examination.

Mr. SUTRO.—Q. Your duties on the tug "Fearless" on this day were what?

A. Engineer, handling the engines.

(Testimony of George W. Driver.)

Q. What were you supposed to do as engineer?

A. Handle the engines.

Q. Handle the engines?      A. Yes.

Q. Were you responsible for the passing out of lines?

A. No; I am responsible for picking up the strain on the line.

Q. Under orders from your captain, or does he get orders from you?      A. What is that?

Q. Does the captain give you orders, or you give him orders?

A. The captain gives me orders, of course.

Q. And you picked up your strain on the line in accordance with his orders, didn't you?

A. No, we always do that, that is, [120] with our tugboat, we always pick the strain up; we are supposed to know that.

Q. The engineer is supposed to know that?

A. Yes.

Q. You are supposed to haul up the lines of the tug, are you?      A. Yes.

Q. From where you stand?      A. Yes.

Q. And supposed to handle your engines, besides?

A. Yes, accordingly.

Q. Have you an assistant in the engine-room with you?      A. At that day, no; he was off.

Q. Now, do you know whether the bow-line of the "Edith" had been cast off at the time that you started to pull her out of that slip the first time?

A. When the first line broke?

Q. Yes.

(Testimony of George W. Driver.)

A. It must have been or she would not have laid down on the dock.

Q. Do you know whether it was or not?

A. By the looks of the conditions of the boat, lying down on the dock, I surmised she was.

Mr. SUTRO.—I move to strike out his surmise.

The COURT.—Let it go out.

Mr. SUTRO.—Q. Do you know whether the bow-line of the “Edith” had been cast off at the time that you first started to tow her out?

A. I could not say, no.

Q. Do you know whether her stern line had been cast off?     A. Yes.

Q. Did you see the stern line cast off?     A. Yes.

Q. Did you hear the master of the “Edith” give the captain of your tug the signal to pull her out?

A. No.

Q. I am talking now about the first time.

A. Yes, I understand.

Q. Now, after the line parted—I will ask you, by the way, whether there was a strong tide running through these slips at that time?

A. Well, yes, because it was running on the outside [121] and there must have been some tide on the inside.

Q. Is it not a fact that you had to act pretty quickly there in taking that tug out of the slip, due to the fact that the tide was running pretty strong?

A. Yes.

Q. You couldn't lose any time there. I am talking now about the time when you were on this side of



(Testimony of George W. Driver.)

the slip (illustrating). You had to move very promptly, because there was a pretty strong tide running through these slips, wasn't there?

A. Yes.

Q. You had to move pretty promptly, so as to get out and get her out clear of the slip, isn't that so?

A. With her engines, yes, with her engines assisting.

Q. Didn't you, as a matter of fact, tell Captain Gray, in the presence of Mr. Williamson, that the parting of that line was due to the fact that you had to act quickly and put a quick strain on the line?

A. I never told Captain Gray anything like that.

Q. Did you tell Mr. Williamson?

A. I don't know Mr. Williamson.

Q. If you did know him you have forgotten who he was?

A. If I see the man perhaps I would remember him; I don't know the name.

Q. Now, after the "Edith" drifted across to the southerly side of Pier 44, you took another line, didn't you? A. Yes.

Q. Was that the first line as the first one that you had that had parted? A. No.

Q. How do you know it was not?

A. Because the first one was broken.

Q. How do you know they did not give you the other end of the same line?

A. Well, the eye was gone out of that line, and the other he sent down had an eye in it.

Q. Didn't that hawser have two eyes?

(Testimony of George W. Driver.)

A. I couldn't say that.

Q. You don't know, as a matter of fact, do you, that the line that was passed to the "Fearless" after the "Edith" drifted across the [122] slip was not the same line that you had on the first occasion, do you? A. Yes, I am positive it was not.

Q. You are positive it was not the same line?

A. Yes.

Q. If the master of the "Edith," or, rather, the mate of the "Edith" testified that it was the same line, you would still think that it was not?

A. Yes.

Q. And the fact that the crew of the "Edith" say that it was not the same line does not shake your opinion in that respect? A. Not a particle.

Q. From where you were standing, how could you tell whether or not they passed out the same line?

A. I could tell because it came from the opposite side; the other end of the line was hanging down in the water.

Q. How far from the stern of the "Edith" was the broken end of that line?

A. Well, it is hard to judge the distance; I would judge about 150 or 200 feet.

Q. How many fathoms of line did you have out when you started to pull?

A. The "Edith" had it out.

Q. How many fathoms of line were out?

A. Well, that is hard for me to judge.

Q. Give us your best estimate.

A. Maybe in the neighborhood of 450 feet.

(Testimony of George W. Driver.)

Q. You had 450 feet of line out?

A. I say in that neighborhood; I could not say positively, no.

Q. You think you had more than 100 feet out?

A. Yes.

Q. When she parted?

A. Yes—I thought you meant the second line.

Q. I am talking about the second line.

A. The first line, when she parted, maybe it was 300 feet out.

Q. How much do you think she had out?

A. I say in the neighborhood [123] of 300 feet.

Q. In the neighborhood of 300 feet? A. Yes.

Q. Where did that line part with respect to the “Edith,” the stern of the “Edith” and the stern of your tug? A. Nearest to the “Edith.”

Q. Nearest to the “Edith”? A. Yes.

Q. Did you haul in the end that was on your tug?

A. Yes.

Q. Did the “Edith” haul in her end?

A. No; they were hauling in when they passed us another line.

Q. She was hauling in at the time she passed you another line? A. Yes.

Q. How many feet do you think were hanging over the stern of the “Edith”? A. In hauling in?

Q. No, when the line broke, how many feet were hanging over the stern of the “Edith”?

A. About 50 or 75 feet, maybe 100.

Q. Maybe 100 feet? A. Yes.

(Testimony of George W. Driver.)

Q. How long would it take a crew to haul in 100 feet of line?

A. All depending on how many men were there.

Q. Suppose there were just two men.

A. It would have taken them quite a while.

Q. 50 feet of line?     A. Quite a while.

Q. About how long?     A. Well, 15 or 20 minutes.

Q. To haul in 50 feet of line?     A. Yes.

Q. Did you see them haul this broken end in?

A. They were hauling it in when they passed another line out.

Q. Did you see them hauling it in?

A. Yes, I saw them start to haul it in.

Q. How many men were working?

A. Two men.

Q. How many men were on the poop-deck of the "Edith"?     A. The stern?

Q. Yes, on the stern?     A. I could not say.

Q. Did the same two men that were hauling in this line pass out the [124] second line?

A. I could not say that.

Q. You saw them hauling in the line?

A. I saw them hauling the line; we were quite a distance away, and the stern was in the air.

Q. You saw them haul it in, or didn't you see them haul it in?

A. I told you I saw them start to haul it in, yes.

Q. Did you see them pass out the second line?

A. I couldn't say whether the same men passed it out or not.

Q. Did you see anybody pass it out?

(Testimony of George W. Driver.)

A. Yes, the line came down to us; who passed it out I could not say, but the line came down to us and we made it fast.

Q. But you could not tell who passed it down?

A. No; it might have been the captain; I couldn't say.

Q. In other words, you didn't see it passed down?

A. I saw the line coming down.

Q. But you did not see them passing it down?

A. I saw the line coming down; therefore, somebody must have passed it; it didn't come itself.

Q. You don't know—

A. (Intg.) I couldn't say who did it.

Q. You don't know whether it was the same men who were hauling in the other line?

A. I couldn't say.

Q. About how long was it before the "Edith" got across that slip?      A. Drifting across?

Q. Yes.

A. In minutes, I couldn't say; it was done so quickly.

Q. Just a few minutes?

A. Just a few minutes.

Q. About how long after this line was parted before you took the second line?

A. A very short time; we had it fast and pulling on her inside of five or ten minutes.

Q. And she turned over?      A. In backing out.

Q. You were pulling?      A. We were pulling.

Q. You went out rather slowly at first until you got the line [125] taut and then you put the



(Testimony of George W. Driver.)

strain on and you assisted her out?     A. Yes.

Q. From the time that this first line broke and the "Edith" drifted across here, and until you started out, you think that was a matter of about five minutes, do you?     A. Somewhere about that.

Q. Not much over it?

A. I don't think it was, before we got her fast.

Q. It would not take her long to drift across that slip, a matter of 200 feet or so?     A. No.

Q. What was the beam of the "Edith," if you know?     A. I could not say.

Q. About 40 feet?     A. I don't know.

Q. As soon as you started to pull her out, did she start backing her engines?

A. After we started to pull her she was backing.

Q. Immediately? She started right off, didn't she?     A. Right along with us.

Q. You did not pull her, really?

A. Certainly we pulled her.

Q. The answer alleges you did not tow her out.

A. We assisted her out, therefore she was turning her wheel.

Q. Now, do you mean to tell me that she was turning her wheel before this broken line had been hauled in?

A. If the line was not trailing in the water, yes, it didn't make any difference.

Q. How high was she out of the water?

A. I don't know.

Q. Can you make any estimate?

A. I could not say; I don't know how high she was;

(Testimony of George W. Driver.)

she is pretty much higher than the tug, but in feet I couldn't say.

Q. 10 feet?      A. Oh, yes.

Q. 30 feet?      A. I couldn't say.

Q. She was not over 30 feet?

A. She was up in the air, that is all I can say.

[126]

Q. She was not turning her wheel, however, at the time that this first broken end was still in the water, was she?      A. Oh, no.

Q. She had hauled it in by that time?

A. She had hauled some of it in.

Q. The 15 minutes necessary to haul in that 50 feet of line had not elapsed when she started out—she still hauling the line in, as I understand you?

A. Yes.

Q. Was she still hauling her line in when you cast off the second line—the first line?

A. No, that line was in.

Q. She got that in by that time, did you say?

A. Yes.

Q. Now, will you tell me what your position was when you cast off the tow-line the second time that you cast off. I wish you would just step here and show us just where you were; show us where the "Edith" was and where you were when you cast off the second line?

A. After we cast off the second line?

Q. You say you had her about 750 feet out?

A. That was the position.

Q. Is that where you want it?

(Testimony of George W. Driver.)

A. Yes, somewhere in that position ; maybe she was down a little bit lower on account of laying against—when we pulled her clear of the dock the tide caught her and the wind caught her.

Q. Now, look at that and be sure that is the way you want it. Is that the way the tug was pointing?

A. Something in that position ; the tide had caught her when she came out of Pier 44 and the pair had drifted out—they had drifted down, particularly the steamship.

Q. As I understand you, the maneuver that the tug was performing was to take her out here?

A. Yes.

Q. And then drop the line? A. Yes.

Q. And then come around here to pick up the bow-line? A. Yes.

Q. And coming up there? A. Yes. [127]

Q. She being pointed up here for Hunter's Point?

A. Yes.

Q. Now, at the time you cast off this line, did you notice how the helm of the "Edith" was?

A. No, I did not.

Q. You don't know whether she had it to port or to starboard? A. No, I couldn't say.

Q. But you did see that her engine was turning?

A. Her engine was backing, yes, and then stopped.

Q. At the time that you cast the line off, her propeller was going forward, was it not?

A. No, it was stopped ; the propeller was stopped at the time when we cast the line off.

Q. At the time you cast this line off the propeller

(Testimony of George W. Driver.)

was stopped? A. Yes.

Q. Didn't you testify on your direct examination that she was going ahead and that you could not hold on and had to drop the line?

A. No, I said when the line was drawn off, she was going ahead, when they pulled the line away from the deck-hand—she had started ahead after the signals of the captain of the tug had been given to the men on the stern to pull the line in, which they were doing then.

Q. Let me understand this.

Mr. CAMPBELL.—You misunderstand him; that is the trouble.

Mr. SUTRO.—At the time you cast off this line from the tug, you were in this position?

A. Yes, in that position.

Q. About opposite Pier 44?

A. Perhaps a little lower than that, but in that neighborhood.

Q. This, you say, is about 700 feet?

A. Yes, somewhere in that neighborhood.

Q. That is from the stern, or from the bow of the "Edith"? A. From the bow.

Q. So that if the "Edith" is 340 feet long, it would be about 360 feet from her stem to Pier 44?

A. No, no; I said 700 [128] from her bow to the dock.

Q. From her bow to the dock? A. Yes.

Q. So that her stern would be about 340 feet further from the dock than her bow would be?

A. Yes.

(Testimony of George W. Driver.)

Mr. SUTRO.—Your Honor will find that in the deposition they speak of the vessel being 70 feet from the dock.

Mr. CAMPBELL.—30 or 40 feet from the dock.

Mr. SUTRO.—30 or 40 or 50 feet. I think in the depositions they were talking about the bow, whereas some of the other witnesses are talking about the stern; she was a ship 340 feet long, and if this dock was 160 feet longer than this one it would to some extent account for that discrepancy.

Mr. CAMPBELL.—You have only taken the depositions of two witnesses.

Mr. SUTRO.—Your answer makes the same allegation, that you were 700 feet out.

Mr. CAMPBELL.—Yes, and we will prove it.

Mr. SUTRO.—You are talking about the stern, as I understand it, and not the bow.

Mr. CAMPBELL.—I am talking about just what I have said.

Mr. SUTRO.—Then I will ask you again: You say the “Edith” was 700 feet off Pier 44?

A. Yes.

Q. Approximately? A. Yes.

Q. Are you talking about the bow of the ship, or the stern of the ship? A. The bow.

Q. You say the bow was 700 feet off?

A. There was that water between the tug and the bow of the “Edith.”

Q. So that the stern was about 1000 feet off the dock—1050 feet?

A. If the “Edith” is the length you say it is, yes.



(Testimony of George W. Driver.)

Q. Now, at the time you cast off—you did cast off that stern line, didn't you?

A. The "Edith" was going ahead and pulled [129] it away from us.

Q. Did you cast the line off?

A. When it was pulled out of the hands of the deck-hand, yes.

Q. When you were towing this vessel out of the slip, what did you do with the line, before you started to pull? A. Made it fast.

Q. Where did you make it fast?

A. On the stern bitt.

Q. Is that an upright bit, or a flat bit?

A. It has four corners to it.

Q. You had the line fast on that, did you?

A. Made fast to that.

The COURT.—How, with a loop? A. Yes.

Q. The eye? A. The eye.

Mr. SUTRO.—Q. You knew that line stayed on there until you got out into this position? A. Yes.

Q. Didn't it? A. Yes.

Q. Now, when you started to undo that line, were the "Edith's" engines turning, or were they still?

A. The engines were still when we started to undo it.

Q. You had signalled the "Edith" to let go—that you were going to let go?

A. The captain had told the man on the stern that he was to hold it in his hand and he held it while they were hauling it in.

Q. Then, as I understand you, at the time the

(Testimony of George W. Driver.)

“Edith” commenced to go forward the line was in your man’s hands?

A. The line was in the man’s hand, holding it while the men on the after part of the boat were hauling it in.

Q. How much of a tide was running on that day?

A. I couldn’t say; very strong.

Q. Three knots, at least?     A. I couldn’t say.

Q. Couldn’t you give us any estimate?

A. I don’t know. [130]

Q. Couldn’t you give us any estimate?

A. No.

Q. Do you know what a three-knot tide is?

A. I couldn’t say; I don’t know what a three-knot tide is.

Q. Was it a tide strong enough to sweep a ship like the “Edith” along pretty fast?     A. Yes.

Q. Was there any wind blowing?

A. Yes, strong wind.

Q. Blowing in the same direction?

A. Blowing in the same direction as the tide.

Q. So that there would be considerable pressure on the ship, wouldn’t there, so as to carry it toward Dock 32?     A. Yes.

Q. Now, as I understand you, before you cast this line off how many men had hold of the line on the tug?     A. On the tug, one.

Q. One man was holding this line?

A. One was letting it go.

Q. He was holding it, I thought you said.

A. He was holding it until we got clear.

(Testimony of George W. Driver.)

Q. So that he was virtually holding the "Edith" in position there?     A. No, that is foolish.

Q. Didn't you tell me that the line had been removed from the bitt?     A. It had.

Q. That he was holding the line?

A. The man was holding the line.

Q. And the engines were stopped?     A. Yes.

Q. The engines were stopped?

A. Both boats, yes, and we were drifting together.

Q. You were drifting together?     A. Yes.

Q. Sort of parallel?     A. Yes.

Q. Weren't you considerably to the port of the "Edith"?

A. We were just about that position until we got down a little bit lower.

Q. Considerably off the port quarter, weren't you?

A. In that position.

Q. In order to be drifting together, you would have to be nearly opposite each other, wouldn't you? Was the tug further astern of [131] the "Edith"?

A. She was just in the position I have described there.

Q. Do you think that a man holding a line on the stern of the tug could hold the "Edith" there while they were hauling in the line?

A. He was not holding the "Edith" there; he was holding the line to keep it out of the wheel while the men were pulling on it.

Q. Why should he want to keep it out of the wheel when the engines were stopped?

A. Because they always try to do a thing like that,

(Testimony of George W. Driver.)

to hold it off, so that the men can get enough of the line in so it won't go in the wheel.

Q. There was nothing to prevent the tug from going astern, was there, when the "Edith" went ahead?

A. We might have picked the line up in our own wheel.

Q. Was the line under your stern?

A. No, it was off to the starboard, where the man was holding it before he let go.

Q. Who was in charge of this operation, as you understand it?     A. What do you mean?

Q. Who was in charge of taking the "Edith" out of that slip and taking her up to the drydock?

Mr. CAMPBELL.—We object to that as calling for a conclusion of the witness.

The COURT.—The objection will be sustained.

Mr. SUTRO.—Q. Who took command of this operation?     A. There were two men in command.

Q. Two men in command?     A. Yes.

Q. Is there any difference between a towage service, as they call it, and an assist?

A. Oh, yes.

Q. In the case of an assist, who is supposed to direct the operation?

A. Well, the man on the bridge of the boat that he is assisting.

Q. Was this an assist?

A. This was an assist, yes. [132]

Q. The captain of the tug did not get any orders, did he?     A. I could not say.

(Testimony of George W. Driver.)

Q. To let go this line?

A. I could not say anything about the orders.

Q. Didn't you say that he gave an order to the mate to haul in his line?     A. He did.

Q. Did anybody from the "Edith" say they wanted the line hauled in?

A. I could not say.

Q. You did not hear it?     A. No.

Q. What did you hear the captain say?

A. To the men on the "Edith," to haul in the line?

Q. What did he say?

A. "Haul in your line."

Q. And at that time both engines were stopped?

A. Both engines were stopped.

Q. Now, as I understand you, while they were hauling in the line, you say the "Edith's" propeller started ahead?     A. Yes.

Q. You say this line was not cast off from the tug?

A. It was not cast off, no, sir.

Q. And if your answer in this case alleges that the line was cast off from said tug after the engines were started ahead, this answer is false. Is that so?

Mr. CAMPBELL.—I object to that, your Honor, as calling for a conclusion.

Mr. SUTRO.—This is their own answer.

The COURT.—He has given his testimony; it does not add to or detract anything from it to compare it with other testimony or with the answer; it is not his answer.

Mr. SUTRO.—Q. Have you ever read the answer in this case?     A. No, sir.



(Testimony of George W. Driver.)

Q. But you have talked with your principals about this case? A. Only once. [133]

Q. Only once? A. Yes.

Q. Do you know whether that was before this answer was filed, or afterwards?

A. I could not say.

Q. How long ago was it that you talked with your principals about it?

A. It seems to me to be about 8 months ago, perhaps 10 months ago.

Q. A long time after the accident. You have not talked about it since?

Mr. CAMPBELL.—You have put an answer into his mouth that he did not say; you say “a long time after the answer was filed”—

The COURT.—No, he said a long time after the accident.

Mr. CAMPBELL.—Oh, I beg your pardon, I didn't understand it.

Mr. SUTRO.—Q. You only talked once about it, you say? A. Yes.

Q. And who did you talk to?

A. Captain Gray.

Q. And that was about 8 months ago?

A. I think it was about three or four months after the accident happened.

Q. Did you observe what took place after the “Edith” started her engines ahead? Did she start her engines?

A. After the line had been cast off?

Q. Yes. A. Yes, she started her engines.

(Testimony of George W. Driver.)

Q. After the line had been cast off?

A. After it had been pulled out of the man's hands, she started her engines.

Q. And then did she stop her engines?

A. Yes, she stopped her engines.

Q. Did you observe how soon afterwards it was that she stopped them?

A. It did not seem to me very long.

Q. Pretty quickly?

A. In a few minutes.

Q. And then she commenced to drift?

A. Yes.

Q. And how far did she drift before you got the third line from her?

A. In the neighborhood of Pier 36, about between 36 and 38, I think it was we got another line. [134]

Q. You did get a third line from her, did you?

A. Yes, sir.

Q. Will you give us the position of the two ships when you got that third line?

A. You want me to go down there to the board?

Q. Yes.

A. It was right here (indicating).

Q. Where was the tug when you got the third line?

A. Right here (indicating).

Q. Was that about your position?

A. Yes, except we were right up against the bow.

Q. You were right up against the bow?

A. Yes, sir.

Q. She drifted that distance, from 44 to 36, pretty rapidly, did she not? A. Yes, sir.

(Testimony of George W. Driver.)

Q. And you operated as quickly as you could to get around to her bow?     A. Yes, sir.

Q. And you ran around to her starboard side here?  
A. Yes.

Q. And you took a line here?     A. Yes.

Q. About how close to the bow were you when you got that line?

A. Right to the bow, right up to the bow.

Q. How close?

A. Oh, a piece of paper couldn't have been put between.

Q. When she passed you the line?

A. Yes, sir, when we got the line; we were waiting there for quite a little time, though.

Q. Did you hear the officer of the "Edith" ask you for a line?     A. Yes.

Q. But you didn't give him one, did you?

A. He couldn't pull the line up.

Q. You say he couldn't pull the line up?

A. No, sir.

Q. What was the matter with it?

A. The line was too heavy for him to handle.

Q. What kind of a line was it?

A. I don't know the dimensions of it, but it was a big hawser.

Q. A 12-inch hawser?

A. I think that is the size of it. [135]

Q. Was that the only line you had on the tug?

A. That was the only line that was any good for pulling a vessel of that description.

Q. Did you have any working line on board your tug?

(Testimony of George W. Driver.)

A. The working lines we do have are very small, they are only lines to tie the boat up to the dock.

Q. Where were they?

A. They were on deck.

Q. They were on deck?      A. Yes.

Q. You didn't have any line that was suitable for towing him up to Hunter's Point from the bow, did you?

A. We had that big hawser. This was an emergency case, you must understand.

Q. What was the emergency?

A. We were trying to get it on as fast as we could.

Q. I say, what was the emergency?

A. To try to prevent the boat from hitting any of the docks.

Q. When you towed him out of Slip 44, you expected to bring him out here and drop the line and come around and catch him on the bow, didn't you?

A. Yes, sir.

Q. And you know that while you were doing that he was going to drift?

A. We would have the time to do it up there in that position, we would have time to get a hawser up.

Q. You knew he would drift, didn't you?

A. Not to such an extent.

Q. You did not figure on the tide and the wind?

A. It was not a matter of figuring on the tide and the wind, it was a matter of using his engines; when he stopped his engines, there was nothing to stop him from drifting.

Q. When you took him out of this slip with a line,

(Testimony of George W. Driver.)

you said there were how many feet between you—  
300 or 400 feet?

A. 300 feet, or something like that. I am a bad  
judge of distance.

Q. About 300 feet. Is that it?

A. Yes. [136]

Q. You knew he would have to stop his engines  
to pull in that line? A. Most assuredly.

Q. Otherwise he would foul the wheel?

A. Yes.

Q. And while he was hauling in the line, and with  
the number of feet that you said you thought were  
out, and if he had two men—

A. (Intg.) You state if there were two men—  
I said there were two men.

Q. I asked you how many men were on the stern  
pulling in that line.

A. You asked me how long—

Q. Well, I will ask you now how many men were  
on the stern pulling it in?

A. Two men at that time.

Q. Now, I will ask you again, pulling him out of  
the slip with a 300-foot line, you knew that to cast  
that line off he would have to stop his engine?

A. That is right.

Q. And he would have to get it in before he could  
start his engine? A. Yes.

Q. And while he was hauling it in, his engine  
would be stopped? A. Yes.

Q. And he would drift?

A. To a certain extent.



(Testimony of George W. Driver.)

Q. He would drift for all the time it took to haul in that rope? A. Yes.

Q. That is correct, is it? A. Yes.

Q. And then you expected to go around on his bow and give him another line. Is that right?

A. Yes.

Q. And you didn't have a line ready?

A. We had a hawser ready.

Q. Didn't you say you couldn't pass that to him?

A. I was speaking of the emergency that we were in at that time.

Q. Is that hawser suitable for towing purposes?

A. Oh, yes, we tow with it right along.

Q. Was that hawser of the character of a towing-line suitable for the purpose of performing the maneuver which you undertook? A. Yes. [137]

Q. Are you sure of that? A. Yes.

Q. What is that?

A. Yes. You are speaking of pulling her from the dock and taking her to the drydock, aren't you?

Q. No, I am speaking of exactly what I said.

A. Are you speaking of the maneuver that we made down there before she hit the dock?

Q. When you started out on this undertaking, you intended to pull her out here? A. Yes.

Q. And to drop the line? A. Yes.

Q. And to run around the bow and pick her up again and take her to Hunter's drydock?

A. Yes.

Q. Now, having that maneuver in mind, I am asking you was the hawser which you had on board of

(Testimony of George W. Driver.)

the character of a towing-line suitable for the purpose of performing that maneuver? A. Yes.

Q. Absolutely? A. Yes.

Q. How long a time do you think it was between the time that that line was taken out of that man's hands, as you say, and the time you got that second line from the "Edith," or the third line, rather?

A. I could not say exactly how long it was.

Q. It was just a matter of a few minutes wasn't it?

A. It took us a little time to get around as we were delayed in getting the line.

Q. I mean, it was a matter of only a few minutes before she drifted from Pier 44 to Pier 36?

A. Yes.

Q. Taking into consideration the situation in which you found yourself, she having drifted down to Pier 36, you didn't have on board your tug a line suitable for towing her up to Hunter's Drydock, did you?

A. Oh, yes, we had a tow-line on her.

Q. What was the line?

A. A tow-line, a hawser.

Q. That hawser you are talking about?

A. Yes, sir.

Q. I thought you said you couldn't use it in that emergency? [138]

A. In the position they were in they could not hoist it on deck. If they had the men there to do it, we would have gotten it on deck, but they had no men to speak of.

(Testimony of George W. Driver.)

Q. They had no men?

A. No; one or two or three men are not enough to handle the hawser.

Q. Apart from that 12-inch hawser, do you know whether you had any other line on board your tug that would have accomplished this maneuver, that would have been sufficient to perform it? Did you have any other lines aboard?

A. I don't know what lines we had. There were lines aboard the boat, but whether they were fit for that, or not, I don't know.

Q. Then you don't know?

A. No, I don't know.

Q. You don't know whether there were any lines below?

A. I know there were lines on board.

Q. As a matter of fact, there was a perfectly good 6 or 7 inch hawser below deck, wasn't there?

A. I don't know what was below deck; I don't know.

Q. Have you ever observed on the tug "Fearless" any of your working lines with wire spliced in?

A. Yes.

Q. Did you have any of those lines on board?

A. Yes.

Q. Were they below deck?

A. They were below deck, but they were too short for that job; they are only mooring lines, lines to moor the boat up to the dock.

Q. Then this hawser was the only line you had that could do this job?

(Testimony of George W. Driver.)

A. The hawser was the line for the job.

Q. It was put on the tug for this purpose?

A. Yes, sir.

Q. For the purpose of this maneuver?

A. Not particularly this job, we do 10 or 15 jobs a day and they use it every day.

Q. You say this was an emergency, in other words, something you did not expect. Is that right?

A. Yes, that is it.

Q. Now, tell me what there was about this situation that you [139] found yourself in here where you had to act in an emergency? What was there about that situation different from what you expected when you left the slip?

A. Well, there was just this much—

Q. (Intg.) Had she drifted over there?

Mr. CAMPBELL.—Let him answer your question.

Mr. SUTRO.—Very well, I will withdraw that last.

A. It was just this, when she backed out and the line was pulled from our hands and they were slow in getting the line in and the man started his wheel and then stopped it and allowed her to drift, it put us up against it; if she had not drifted as far as she had down in that position off of 36, we would have gotten our hawser aboard and there would have been nothing to it. The man aboard the "Edith" allowed her to drift too far, and it put her in such a bad position off that dock.

Q. But he had to let her drift, he couldn't turn

(Testimony of George W. Driver.)

his engine while he was pulling in the 300 feet of line?

A. If he had a winch and the men to use the winch, he would have gotten the line in.

Q. If he had men and a winch?

A. The winch was there.

Q. Then if he had used the winch she would not have drifted so far?

A. That is the idea exactly.

Q. But she would have drifted?

A. She would have drifted a short distance and everything would be all right, and we would have gone about our business.

Q. He had to drift some, didn't he?

A. Most assuredly, yes.

Q. The way this was undertaken, he could not have been towed up to Hunter's drydock without stopping his wheel and drifting to some extent: Is that not true? A. Yes.

Q. And while he was drifting, you would have prepared to come around and give him a bow line: It that not so? [140]

A. Yes, but you must understand that we don't always give lines, we take them on these tows, on these assisting jobs we take a line.

Q. You had to give or take a line?

A. Or take a line, yes.

Q. The real cause of this difficulty, then, in your opinion, is the fact that he was slow in getting this line in when he was opposite Pier 44: Is that correct?

A. The whole difficulty is he was slow in not get-



(Testimony of George W. Driver.)

ting the line in and when he found himself in such a position, he had two anchors, and he should have dropped one of them to hold himself.

Q. He should have dropped his anchor?

A. That is it.

Q. Then that would have been an emergency, wouldn't it?

A. Yes, and we were up against it.

Q. What I am talking about now is that because of this emergency was the fact that he was slow in getting the stern line in: Isn't that so?

A. Yes, sir, that is one of the reasons, but for her to be in the position where she was down at Pier 36 is another different reason altogether.

Q. You mean he should have dropped his anchors?

A. Yes, that is it.

Q. And when you get right down to it, as I understand you, in your opinion the real difficulty, here, or the real cause when you get right down to it, was the fact that he did not pull that line in fast enough after he came out of Slip 44?

A. That was one reason, yes.

Q. That was what started the trouble?

A. That is what started the trouble.

Q. And really was the prime cause of it?

A. Yes.

Q. Why did you take a line from the starboard quarter when you took that second line? Just explain the purpose of that. Didn't you say that the second line you took was from the starboard [141] quarter of the "Edith"?

(Testimony of George W. Driver.)

A. I didn't say anything about it in my testimony.

Q. Do you know whether the second line came from the starboard quarter, or the port quarter?

A. No, but it seems to me that the second line came from the port quarter.

Q. You think that the second line came from the port quarter? A. Yes.

Q. Are you sure of that?

A. No. I say it seems to me. The first line came from the starboard quarter, and broke, and the second line came from the port quarter.

Q. Now, that is a pretty important circumstance, isn't it, which side of the ship to take a line from?

Mr. CAMPBELL.—Now, that is calling for the conclusion of the witness. It is for the court to determine whether it is an important circumstance, or not.

Mr. SUTRO.—Q. In performing these towing operations, you have a purpose in whether you take the line from the starboard quarter or the port quarter, you are governed by conditions, aren't you?

A. The captain is.

Q. Whether the line comes from one side or the other is sometimes a very important matter, isn't it?

A. I believe it is, yes.

Q. But you don't know which side of the vessel the line came from?

A. I said that I thought that the first line to fit the conditions would be from the starboard side.

Q. Well, was it?

A. I say I thought it was, and I think so yet.

(Testimony of George W. Driver.)

Q. Are you pretty sure of that?

A. I say I think it was.

Q. And the second line, you think, came from the port quarter?      A. I think it did.

Q. Are you sure of that?

A. I say I think it did.

Q. Are you sure you saw those lines at all? [142]

Mr. CAMPBELL.—Oh, that's foolish.

Mr. SUTRO.—I object to that comment, Mr. Campbell.

Mr. CAMPBELL.—Well, you have been poking away at that about 40 times.

Mr. SUTRO.—I haven't been poking away at it, and I object to having the examination characterized as foolish. Just read the last question, Mr. Reporter.

(Question read by the reporter.)

A. Do I have to answer that question, Judge?

The COURT.—Yes, answer it.

A. Well, it is such a foolish question, because I have been talking about the lines right along.

Q. Just tell us whether you are sure you saw them—it is a question that can be answered easily by "Yes" or "No."      A. I saw them, yes.

Mr. SUTRO.—Q. I mean these lines when you started.      A. Yes, I told you I saw them.

Q. But you don't know which side of the ship they came from?

A. I told you what I thought. If you asked me what day it happened, I couldn't tell you, I couldn't be positive on it.

(Testimony of George W. Driver.)

Q. Was the "Edith" a screw steamer?

A. Yes.

Q. A right screw? A. I couldn't say.

Q. Did you see the wheel?

A. I couldn't say I saw the wheel. It seems to me the wheel was showing above the water. Positively, I could not say. I saw the churn of the water.

Q. As a matter of fact, she was light, wasn't she?

A. Yes.

Q. And being light, it is natural that a part of her propeller would be out of the water? A. Yes.

Q. And the right screw would naturally pick up anything that was under the starboard side of the vessel, would it not—that is, a screw which would be turning to the right would naturally pick [143] up anything that might be to the starboard?

A. Yes.

Q. So that if the tow-line had been, we will assume now, cast off by the tug, the single screw of the "Edith" turning to the right, would naturally tend to foul it, would it not? A. Yes.

Q. You have had some experience on board steam vessels, have you not? A. Yes.

Q. I want to ask your expert opinion on this question: Is it not a proper thing for an engineer or a captain or any officer who is in charge, if he has reason to believe that his wheel is about to foul, to stop his engines? A. Yes.

Q. That is the proper thing to do, isn't it?

A. Yes.

Q. And you would not consider it an improper

(Testimony of George W. Driver.)

thing for him to do that even though it subsequently developed that the wheel had not fouled; it is a proper precaution to take, is it not? A. Oh, yes.

Q. One of the things that an officer in charge of a steam vessel must avoid is the fouling of his wheel: Isn't that so? A. That is right.

Q. Now, with this line hanging over the stern, and a signal from the mate that the line had been cast off, would it or would it not have been the proper thing for the captain to stop his wheel? A. It would.

Q. It would have been the proper thing for him to have done so? A. Yes.

Q. Of course, you had no conversation with the captain about what you were going to do?

A. Oh, no.

Q. When you came around under the "Edith's" bow, did you make any effort to push her starboard bow around?

A. No. We lay up alongside of her waiting for a line, that is all.

Q. You didn't make any effort to shove her?

A. No.

Mr. SUTRO.—That is all. [144]

Redirect Examination.

Mr. CAMPBELL.—If you look at page 4 of Captain McDonald's deposition and page 56 of Hanson's deposition, Mr. Sutro, you will see that one man said that the line was from the starboard quarter and the other said it was from the port.

Mr. SUTRO.—Well, the Court will observe that.

Mr. CAMPBELL.—Q. In two places here at the



(Testimony of George W. Driver.)

same time, Mr. Driver, you gave this testimony, you have testified both ways in this one instance, and all your other testimony is the contrary; I want you to state now what do you mean by casting off the line, taking it off the boat?

A. Casting a line off is to throw it off the boat.

Q. Was that what you meant when you said about letting it go out of the man's hands? A. Yes.

Q. At the time that it went out of the man's hands, was the engine of the "Edith" stopped or working ahead? A. They started to work ahead.

#### Recross-examination.

Mr. SUTRO.—Q. You afterwards assisted the "Edith" into the drydock at Hunter's Point, you said? A. Yes.

Q. Did you put her in there? Just what did you do?

A. We gave her the big hawser and pulled her around facing the dock so she could be pulled into the dock by a line.

Q. And that hawser, of course, had a heaving line on it?

A. A heaving line is hardly heavy enough to haul up the hawser.

Q. But did it have a heaving line on it?

A. No heaving line, no. It required a good size line to take up the hawser. It had a line to draw it aboard the boat.

Q. It had a line to take the place of the ordinary heaving line?

(Testimony of George W. Driver.)

A. Yes, a line large enough to draw the hawser aboard the boat.

Q. It was a very heavy heaving line—it was a heaving line, was it?

A. No, it was a hauling line. [145]

Q. A good deal smaller than the hawser?

A. Yes.

Q. And intended to take the place of a heaving line, because the heaving line would not be heavy enough to draw the hawser up: Is that it?

A. Well, it answers the purpose.

Q. How long was that hauling line?

A. I don't know, I could not say.

Q. You saw it, didn't you?

A. I saw it lying on the tug. It might have been 50 fathoms or it might have been 10 fathoms.

Q. It would be over 10 fathoms, wouldn't it?

A. Oh, yes.

Q. Well, you would say it was over 20 or 30 feet long, wouldn't you?

A. It was long enough to reach the bow of the boat and draw the hawser aboard.

#### Further Redirect Examination.

Mr. CAMPBELL.—Q. When you were at the dry-dock, was the tug at the stern of the 'Edith' or at the bow? A. At the bow.

Q. Are you sure about that?

A. Yes, because we pulled her head-up into the dock.

**Testimony of Richard C. W. O. Kraatz, for Claimant.**

RICHARD C. W. O. KRAATZ, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Are you in the employ of the Shipowners & Merchants Tugboat Company?

A. Yes, sir.

Q. Do you hold a government license?

A. Yes, I do now; not at the time that this happened, though.

Q. What is it, a mate's license? A. Yes, sir.

Q. Were you on the tug "Fearless" at the time of the "Edith's" accident? A. Yes, sir, I was.

Q. What was your position aboard the tug?

A. Deck-hand.

Q. Who handled the lines from the "Edith" on the deck of the tug?

A. It was me and my partner; the cook was around there, too, at the start. [146]

Q. Where was the "Edith" berthed when you went to her? A. 46.

Q. Which side? A. On the north side.

Q. And when the tug went into the slip, which way did the tug go in, head in or back in?

A. Head in.

Q. When you began towing, which way were you towing? A. Headed out then.

Q. How did you get turned around?

A. I don't know; the tide, I suppose, swung it around.

Q. Is your recollection clear now as to whether you backed in or went bow in?

(Testimony of Richard C. W. O. Kraatz.)

A. I remember we put up a head-line, up the dock.

Q. You put a head-line up the dock? A. Yes.

Q. On what dock? A. On 46.

Q. What effect did the tide have upon you?

A. I suppose it put her bow up to the dock and swung her stern out, the stern down towards 44.

Q. What was the height of the stern of the "Edith" as compared with the deck of the tug?

A. Well, 20 feet, I would say.

Q. Higher? A. Yes.

Q. Did you receive a line from the "Edith"?

A. No, they passed us a line from the wharf.

Q. They passed you a line from the wharf?

A. Yes, one of the lines was fast to the wharf, and they gave that line to us.

Q. They gave you that line? A. Yes, sir.

Q. From which side of the "Edith" did that line come? A. From the starboard side.

Q. What was the position of your tug at the time that you got that line?

A. We were laying bow on to 46, and we had the stern over to 44.

Q. And whereabouts was the line passed aboard the tug? A. Aft; we made it fast aft.

Q. But where did you receive it aboard the tug first?

A. They passed [147] us a heaving line—on the bow we received it, and they gave us a heaving line and we passed it aft.

Q. You passed the heaving line aft?

A. Yes, and then hauled in the line.

(Testimony of Richard C. W. O. Kraatz.)

Q. And then you hauled in the big line?

A. Yes, sir.

Q. What was the size of that line?

A. 8 inches.

Q. What was on the end of this 8-inch line?

A. A splice, a big eye on it.

Q. A big eye?      A. Yes.

Q. And did you make it fast to your tug?

A. Yes, sir, we slipped it over between the towing bits and slipped it over one of the horns.

Q. You slipped it over one of the horns?

A. Yes.

Q. What are the horns?

A. It has four corners to it, four horns standing up, and two are sidewise and as a rule it is just taken in like that.

Q. Do you think you can make me a drawing of those bits?      A. I think so.

Mr. SUTRO.—Mr. Campbell, are you examining him now about the first line that was passed?

Mr. CAMPBELL.—Yes.

A. It is about in this shape here (showing).

Q. What parts of the bitt do you call what I have marked "A" and "B"?

A. I don't know whether they have any special name. I call the whole four of them horns.

Q. What do you call "C" and "D"?

A. I have no special name for that.

Q. You said you passed the line between the bits and over the horn?

A. Yes; that is in between the bits; the whole



(Testimony of Richard C. W. O. Kraatz.)

business is considered the bitts, and I passed it in here.

Q. That is, you mean between "C" and "D"?

A. Yes. [148]

Q. And then you put the eye here?

A. Over here.

Q. Over "A" and "B"? A. Yes.

Mr. CAMPBELL.—I offer this drawing in evidence.

(The document was here marked Claimant's Exhibit "A.")

Q. After the line was made fast to the tug, what was done?

A. They gave us an order to let go the lines on the tug, and we let that line go, we had the line up on the dock, and then we pulled around.

Q. What was done with the stern lines on the "Edith"? A. They were hauled in.

Q. Then what was done with your tug?

A. Then we pulled out of the slip.

Q. What position was the tug in when she began to put a strain upon the line? A. Stern to stern.

Q. Stern to stern? A. Yes, sir.

Q. How were their courses?

A. Well, I would say in a southeasterly direction.

Q. Was the tug straight behind the "Edith" or was she angled?

A. She was angled; the "Edith's" stern was inclined to swing over to 44 before we put the strain on her, I think.

Q. Which way was the tug pointing?

(Testimony of Richard C. W. O. Kraatz.)

A. It was pointing out, out between the slips.

Q. And when you started ahead on your tug, was any hawser paid out from the "Edith," did they pay out this line that you made fast to your tug?

A. Yes, we started ahead slowly, and then the skipper swung out to make fast the line, and they made it fast, and we began to pull on it.

Q. When you began to pull on that line, what kind of a strain did you put on it?

A. We started up slowly and put an even strain on it; after that I don't know what strain was put on it.

Q. State whether or not you jumped the line or jerked the line? [149]

A. No, she fetched up slowly; she fetched up slowly and then steadied tight until it busted.

Q. What happened to the line? A. It parted.

Q. Whereabouts did it part?

A. Right next to the splice.

Q. Where was that with respect to the bitts on your tug?

A. It was four feet from the bitts.

Q. It was four feet from the bitts? A. Yes, sir.

Q. What happened to the line then?

A. Nothing happened; it went overboard from the tug.

Q. Was it hauled in by those on the "Edith"?

A. Yes, it was.

Q. How long was the line at the time that it broke?

A. I should say somewhere around 15 fathoms.

Q. Then what happened after that line parted?

(Testimony of Richard C. W. O. Kraatz.)

A. She drifted over to 44.

Q. Did you save that eye of the line?

A. Yes, sir, we did.

Q. You say the steamer drifted to 44?

A. Yes, she drifted over to 44.

Q. Then what was done after she was alongside of 44?

A. We passed up another line and started pulling again.

The COURT.—Q. You passed up a line?

A. No, they gave us a line; we passed up the heaving line.

Mr. CAMPBELL.—Q. What size line did you get the second time?

A. I think it was an 8-inch line.

Q. How did it look, compared with that of the first line?

A. I would say the two of them were maybe one line, or maybe not; they both looked to me to be the same size.

Q. From which quarter did you get that line?

A. From the port quarter.

Q. And what did you do with it?

A. Made it fast on the bitts again.

Q. How was the end of that line, what was the condition of it? Was there an eye in the end of that line?

A. There was an eye in the [150] end of that line, too.

Q. And how did you make that fast on your bitts?

A. The same way as the other.

(Testimony of Richard C. W. O. Kraatz.)

Q. How much of that line did they pay out to you?

A. They gave us about 40 to 50 fathoms, I would say.

Q. After that was made fast, then, what did you do? A. We commenced to pull on it.

Q. What happened after that; go ahead and tell us?

A. We pulled out from the slip, and we were somewhere around 800 feet out of the slip, I think, and the skipper said, "All right, let go," and then I took it off the bitts and held onto the line as long as I could, and then I let go. Then I never paid any more attention to it and I went up forward. While we were passing the bridge, the skipper sung out to the man, I think it was the captain, and he hollered out to him, "Give me a good line up by the bow," and the mate repeated it, he sung out, "Give him a good line over the bow."

Q. What was it that caused the line to slip out of your hands? A. I couldn't hold onto it any longer.

Q. Why not?

A. Because there was too much weight on it.

Q. At that time did you observe whether the "Edith's" wheel was working?

A. When I let go I think it started up.

Q. But prior to your letting go, or between the time that you had cast the line off the boat, or taken it off the boat, and the time of throwing it off the tug, what had *been with* the line aboard the "Edith"?

A. They hauled it in.

Q. How much line was out at the time you let it

(Testimony of Richard C. W. O. Kraatz.)

go from your hands, in your judgment?

A. I should say somewhere around 15 fathoms.

Q. How far off the "Edith" do you think your tug was at that time?

A. We were not very far from it.

The COURT.—Q. I should say about 15 fathoms.

A. No, the line was trailing a little behind; when the line is 15 [151] fathoms, a part of it was hanging in the water, and there was considerable strain on it.

Q. Then it would be a little less than 15 fathoms, would it?     A. Yes, sir.

Mr. CAMPBELL.—Q. After the line was let go, you said you went forward on your tug?     A. Yes.

Q. What did your tug do?

A. We went right underneath his bow.

Q. On which side did you pass him to get to his bow?     A. The starboard side.

Q. What was it you said transpired between the two captains?

A. He hollered to him, "Give me a good line over the bow," and the skipper repeated it, and then he sung out to the mate forward up on the fore-castle-head to give him a good line.

Q. The captain of the "Edith" sung this out to the man up on the fore-castle-head of the "Edith"?

A. Yes.

Q. When you took your position at the bow, how did the two vessels lie?

A. She was right up against the "Edith's" bow; you couldn't have got a sheet of paper in between,



(Testimony of Richard C. W. O. Kraatz.)

we couldn't have got any closer.

Q. Were there any marks left on the fender of the tug from the contact?

A. Yes, there is a dent in the guard there, yet,— I don't know whether they have taken it out, or not.

Q. What transpired when you reached the bow of the "Edith"?

A. There was an argument started as to who was going to pass a line.

Q. What was the argument.

A. The mate hollered from the forecastle-head, "The bum towboat hasn't got lines." The skipper sung out to the mate, "You couldn't pull up that line if I gave it to you." That lasted for about three minutes. Finally the mate decided he would give us a line.

Q. Where did he pass that line to you?

A. We made it fast on the [152] bitts again.

Q. From which side of the "Edith" did that come down to you?      A. On the starboard.

Q. And where did you make that fast?

A. On the towing bitts again.

Q. Then what did you do with your tug?

A. We commenced to go ahead on her.

Q. Which way did you head the tug, which way did she run?

A. We headed her right in the wind; that would be somewhere around southeast.

Q. How was the line of your tug with respect to the line of the steamer?

A. It was at an angle. We were pulling up to

(Testimony of Richard C. W. O. Kraatz.)  
windward, you might say, from the "Edith."

Q. Just tell us now what took place when you began to pull?

A. When we commenced to pull, we were quite a few feet out, and after we commenced to put a little strain on it the line commenced to render at the bitts.

Q. What do you mean by that?

A. It slipped out, it paid out.

Q. From what bitts?

A. From the side bitts on the "Edith's" bow, They had it up on the forecastle-head, they had two bitts there, if I remember right, and it was made fast from one of them.

Q. What is the effect of its rendering on this bitt?

A. It paid out more line.

Q. How much line did you have out finally when they made it fast? Just give your best judgment?

A. It was all of 500 feet; there was considerable then paid out.

Mr. SUTRO.—At which time was this?

Mr. CAMPBELL.—When he began to put the strain on; when the line was made fast, my question was.

Q. What kind of a strain did you put upon that line?

A. We fetched up slowly on her; I don't know what strain they put on her any more. [153]

Q. How did you start to pull on it?

A. The line tightened up slowly. I don't know how much strain was put on her; the line was tight when it snapped.

(Testimony of Richard C. W. O. Kraatz.)

Q. How soon after it was tight did it snap?

A. After they had made fast when the line rendered, there was a man up on the bridge, and he hollered—there was nobody on the forecastle-head at the time this line commenced to render out, and somebody came jumping up on the forecastle-head and took a couple of more turns, around the bits, and the minute those turns were taken—well, probably a minute after that it snapped.

Q. Whereabouts did she part?

A. Right next to the splice.

The COURT.—Q. On your boat, do you mean?

A. Yes, about four or five feet from the towing bits.

Mr. CAMPBELL.—Q. You mean where the end of the line is spliced back into the main part of the line so as to form the eye?

A. Yes, sir.

Q. What was it you said about somebody on the bridge of the “Edith”?

A. There was nobody on the forecastle-head at the time this line commenced to render out and somebody came jumping up on the forecastle-head and took a couple of more turns.

Q. What was said? You said somebody called out something from the bridge of the “Edith.” When your line began to render, I understood you to say somebody called out from the bridge of the “Edith.”

A. Yes.

Q. What did they say?

A. I couldn't hear what they hollered, but some-

(Testimony of Richard C. W. O. Kraatz.)

body came running up and I supposed they hollered out that the line was rendering.

Q. How many men did you see the mate have on the forecastle-head at the time he passed this line from the starboard-bow?

A. There was him and two more.

Q. Him and two more? A. Yes. [154]

A. Yes.

Q. What is your judgment as to whether or not it would be possible for those three men to have hauled this large hawser onto the "Edith"?

A. Well, all I have got to say is that if they were as lazy as the rest of them they would never have got the line up.

Mr. SUTRO.—I move that that answer be stricken out.

Mr. CAMPBELL.—I have no objection; let it go out.

Q. What I want is your judgment as to whether or not three men would have the strength sufficient to haul that line aboard.

A. No, three men would not be able to haul up that line.

Q. What size line was it? A. A 12-inch hawser.

Q. What was there on the end of it?

A. A wire pennant.

Q. And how long was that wire pennant?

A. That wire pennant would be about 20 fathoms—well, somewhere around 18 fathoms, 17 or 16; I think it would be 16 fathoms.

(Testimony of Richard C. W. O. Kraatz.)

Q. After the second line parted, then what happened?

Mr. SUTRO.—I think we are calling that the third line, now.

The WITNESS.—That would be the third line, wouldn't it?

Mr. CAMPBELL.—Q. After the line from the bow parted; it was the second parting of the third line; what took place after the bow-line parted?

A. The skipper hollered out to go astern of her; as soon as the line parted he hollered out to go astern of her.

Q. When you say the skipper, who do you mean?

A. Our captain.

Q. He hollered out what?

A. To go astern of her.

Q. To the "Edith"? A. Yes.

Q. Did you hear any response to that?

A. Yes, he hollered "I can't." That is all he said.

Q. Then what happened?

A. Then he commenced to drift down onto the other dock, onto 32.

Q. Before she struck 32, what, if anything, was done to the engines [155] of the "Edith"?

A. The engines commenced to move; whether they were going ahead or astern, I could not say; I suppose she was going astern.

Q. How do you know the engine began to move?

A. I could see the water thrown up.

Q. How did the "Edith" strike the dock?

A. Hit on the corner, on the starboard quarter.



(Testimony of Richard C. W. O. Kraatz.)

Q. Which corner of Pier 32?

A. On the south side, the southeast corner or the south corner.

Q. Then what happened after that?

A. We drifted around there for a while and she straightened up again and she pointed up to Hunter's Point then, so we followed her.

Q. Did you assist her up to Hunter's Point?

A. No, she went up on her own steam.

Q. When you got up to Hunter's Point, did you assist her into the drydock?

A. Yes, we passed her the hawser then.

Q. How was that hawser passed aboard?

A. They hauled it on board her.

Q. With what?     A. With the winch.

Q. Whereabouts was the winch located?

A. On the lower deck.

Q. Where did they get the hawser aboard?

A. I don't know exactly, but it was a little distance from Hunter's Point before we got up there.

Q. I don't mean that, I mean whereabouts on the "Edith" was the hawser passed to the "Edith"?

A. It was passed up on the port quarter.

Mr. SUTRO.—The port quarter?

A. Well, the port stern is really more like it. There are two chocks, one chock on each side, and sometimes we call it the quarter and sometimes the stern; I would say it was the stern, the stern of the "Edith."

Q. By means of what line did they haul this hawser up?

(Testimony of Richard C. W. O. Kraatz.)

A. Passed up a heaving line, and then in between the heaving-line [156] and the hawser when we do use the hawser I always had a hauling-line.

Q. What did they do with the hauling-line, where did they take that?

A. They took that down to the winch.

Q. That was on the main deck of the vessel?

A. Yes.

Q. Where was that with respect to the poop?

A. You mean the winch?

Q. Yes. A. It was on the lower deck.

Q. And where was it with respect to the break in the poop?

A. I don't know how far it was from the poop.

Q. Was it in front of the poop?

A. Yes, it was right next to the poop.

Q. How far off Pier 44 or away from Pier 44 was the "Edith" at the time that the line was cast off from the tug?

A. Well, I would say all of 800 feet.

Q. And where, in your judgment, were the two vessels at the time the second hawser—the third hawser, parted, the third line from the bow parted?

A. She was off 36 at the time the third line parted.

Q. What was the distance, in your judgment, off Pier 36? A. Well, it was all of 200 or 250 feet.

The COURT.—We will take this matter up again at two o'clock.

(A recess was here taken until two P. M.) [157]

(Testimony of Richard C. W. O. Kraatz.)

AFTERNOON SESSION.

RICHARD C. W. O. KRAATZ, recalled.

Cross-examination.

Mr. SUTRO.—Q. Can you tell us how much line you had out when you started to pull out of Pier 44?

A. When we commenced to pull the first time or second time?

Q. I will withdraw the question. As I understand you, the first time you pulled the “Edith” it was up against Pier 46? A. Yes.

Q. Then that line parted? A. Yes.

Q. That is a starboard line; that is, it was off the “Edith’s” starboard quarter. Is that correct?

A. Yes.

Q. Now, after it parted and she went over to Pier 44, you then got a line and went out with it. How much line was out when you started to pull?

A. I think that line was about 150 feet, I should judge.

Q. So that there would be 150 feet distance between your stern and the stern of the “Edith”? A. Yes.

The COURT.—Q. You mean after it was fastened?

A. Yes, after it was fastened—that is, the line that we put on her was about 150 feet between our stern and the “Edith’s” stern when we pulled.

Q. How much to a fathom? A. Six feet to a fathom.

Q. Is that the line that you said was 50 fathoms long?

A. No, that was the head-line; the longest one was

(Testimony of Richard C. W. O. Kraatz.)

the head-line; but this was about 150 feet.

Mr. SUTRO.—This one you say was about 25 fathoms?     A. 150 feet.

Q. Six feet to the fathom?

A. Yes, about 25 fathoms.

Q. That was off the port quarter?     A. Yes.

Q. You are sure of that?     A. Yes.

Q. You are not sure in your own mind whether that second line [158] was the same line that had been fast to you were off Pier 46, or a new line?

A. The two of them looked alike.

Q. It might have been the same line?

A. It might be and it might not; they looked alike to me.

Q. If the mate of the “Edith” should testify that that was the same line, you would not be willing to say that he was wrong?

A. That I couldn’t say, but it looked the same line.

Q. What was the most line that you got from the port quarter of the “Edith”—what was the largest quantity of line that you got at any time before you cast off?     A. 150 feet.

Q. She never had more than 150 feet out?

A. She might have had a foot or more, but somewhere around 150 feet.

Q. I am not quibbling about a foot or ten feet more or less.     A. Yes.

Q. She had something in the neighborhood of 25 fathoms?

A. She had somewhere around 150 feet.

Q. Somewhere in the neighborhood of 25 fathoms?

(Testimony of Richard C. W. O. Kraatz.)

A. 150 feet.

Q. You said on your direct examination that she had 40 or 50 fathoms out. You want to correct your testimony in that respect, do you?

A. I don't know that I ever said 50 fathoms.

Q. If you said that you want to correct your testimony? A. Yes.

Q. What you wish to be understood as testifying to is that she had 25 fathoms out? A. Yes.

Q. Now, you went on pulling until the "Edith" got out you say about 800 feet from Pier 44?

A. Yes, all of that.

Q. Bow or stern? A. I would say bow.

Q. The bow. A. Yes.

Q. In other words, her bow, you think now, was about 800 feet out? A. The bow was 800 feet out.

Q. And if the vessel was 340 feet long, then you would say, of course, that her stern was 1140 feet off Pier 44. Is that correct? [159]

A. Somewhere near that.

Q. You do not agree, then, with the engineer in that respect.

Mr. CAMPBELL.—I object to that, if your Honor please, as immaterial and irrelevant.

The COURT.—The objection will be sustained.

Mr. SUTRO.—You think she was somewhere within 50 feet or 100 feet of that distance, do you?

A. Yes.

Q. About 1140 feet out—from the stern, about 1140 feet from Pier 44? A. Yes, all of that.

Mr. CAMPBELL.—Is that her length, 340 feet?



(Testimony of Richard C. W. O. Kraatz.)

Mr. SUTRO.—About 340 feet.

Q. You had the tug's end of that line fastened onto the bitts, didn't you? A. Yes.

Q. The bitts you have described here this morning? A. Yes.

Q. Did you take it off that bitt? A. Yes.

Q. Who told you to take it off?

A. The captain of the tug.

Q. The captain of the tug? A. Yes.

Q. Anybody working there with you?

A. Yes, the fireman.

Q. Did he help you take it off the bitts?

A. Yes.

Q. Now, then, at the time the line was off the bitt, or while you were taking it off the bitt, was that about the position of the vessels as indicated on that diagram there?

A. Yes, that is about it; it might have been a little—that is about it, I think.

Q. That is, the "Edith" was about opposite Pier 44? A. Yes, that is what it was.

Q. Her bow had paid off a little—I think that is what you call it? A. Yes.

Q. A little to the starboard? A. Yes.

Q. And you had this port quarter line, you say?

A. Yes.

Q. And the tug was off under the port quarter of the "Edith," some little distance away?

A. Yes, a little distance. [160]

Q. At any rate, the bow of the "Edith" was pointing to starboard and not to port—pointing down-

(Testimony of Richard C. W. O. Kraatz.)

stream and not upstream?

A. Yes, it pointed a little down, as near as I can remember.

Q. A little bit downstream? A. Yes.

Q. And you think the tug was as much to the port side of the "Edith" as is shown here, or more, or just at that place?

A. Well, I don't know; it could have been a little less, but that is as near as I would say it was; it might have been a little less.

Q. Do you think the tug was a little nearer the stern? A. Yes.

Q. Not quite so much to port? A. Probably so.

Q. How was the tug headed? Was she headed directly upstream, or how?

A. No—well, she would be pointed somewhere to Hunter's Point, somewhere that way.

Q. Was it *point* at right angles to the way the "Edith" was pointing? A. No, that she was not.

Q. This is almost right angles, is it not? A. No.

Q. Would you say she was pointing a little more down this way?

A. A little less she was pointing; the angle was not quite as big as it is there.

Q. About like that? A. Yes.

Q. So that she was pointing across the stream?

A. She was pointing over—well, she was pointing more than Hunter's Point; she was pointing over towards Alameda, almost.

Q. Now, at the time you took that line off the bits, was there any strain on it?

(Testimony of Richard C. W. O. Kraatz.)

A. No; there was the weight of the line; that was all.

Q. Just the weight of that line, which swung down with the tide? A. It was hanging in the bight.

Q. How much of a bight would you say that was?

A. It was hanging quite a distance, trailing behind the "Edith" and us. [161]

Q. Let me put it this way: If there was 25 fathoms of line between you and the "Edith," what was the distance between the stern of the "Fearless" and the stern of the "Edith"; in other words, how much would you allow for the bight?

A. It might have been 15 fathoms on the stern of the "Edith."

Q. So it would be about 45 feet away from the stern of the "Edith"? A. More than that.

Q. It would be about 90 feet away from the stern of the "Edith"—about 15 fathoms?

A. Somewhere around 90 feet; it was about a ship's length of the "Fearless"—the length of the "Fearless" that it was.

Q. How long do you think it would take the men on the "Edith" to haul in that 25 fathoms of line?

A. Well, I would say somewhere around six minutes.

Q. About six minutes? A. Yes.

Q. You don't think it would take fifteen minutes?

A. No, unless they wanted to haul it all in—that is too long.

Q. Six minutes?

(Testimony of Richard C. W. O. Kraatz.)

A. Six minutes, I would say—six or seven minutes.

Q. At the time that the “Edith” started out of the dock, she had her wheel astern? A. Yes.

Q. Do you remember that the wheel of the “Edith” stopped just as she got clear of the dock?

A. No, she was still going astern; just when the skipper sang out to me, “Let go of that line,” she was stopped.

Q. You mean to say that the propeller of the “Edith” at no time stopped from the time she left the pier until he sang out to you?

A. Until he sang out to me, yes.

Q. She was making considerable headway, was she not.

A. Sternway.

Q. Sternway? A. Well, no, she was not.

Q. Is it your testimony that she did not slow up her sternway by [162] stopping her engines and going slightly ahead when she got about opposite the end of Pier 44—when her bow was about opposite Pier 44?

A. No, she was not going ahead; she was commencing to kick ahead when I let the line go out of my hand; then she commenced to give a kick ahead.

Q. You said that when you went around to the starboard bow of the “Edith,” there was an argument there about the line? A. Yes.

Q. The officer in the “Edith” wanted the tug to pass his hawser? A. Yes.

(Testimony of Richard C. W. O. Kraatz.)

Q. And the tug wanted the officer to pass a line to the tug? A. Yes.

Q. The tug was directly under the bow of the "Edith"? A. Yes.

Q. If you were going to pass a line from the tug to the "Edith" you could not have been in any better position to do it, could you, if you were out in the stream? A. That was as near as we could get.

Q. You could not get any closer either to take a line or give one, could you?

A. We could have probably made another 30 feet, if the captain was in a position to hold his ship there—we could have probably got a little closer.

Q. But practically you were as close as you could get? A. Yes, that was as near as we could get.

Q. Did the tug make any effort to push the nose of the "Edith" around? A. No.

Q. That is done sometimes, is it not?

A. Not with the side of the ship; you have to put the stem of the towboat against the ship in order to do it, not broadside—you can't do it broadside.

Q. That was not suggested to the master of the "Edith," was it, that you heard?

A. I don't know anything at all about that.

Q. You were there, were you not? You heard the argument there, didn't you?

A. Yes, I was, but as I say, there was nothing [163] said about pushing.

Q. Nothing said about shoving her around?

A. No, nothing said.



(Testimony of Richard C. W. O. Kraatz.)

Q. When the propeller of the "Edith" moved forward, did you notice the "Edith's" helm? A. No.

Q. Do you know whether her helm was hard astarboard? A. I couldn't say.

Q. Don't you know that the captain tried to turn his vessel with his helm hard astarboard and relied on the tug to pull his stern around?

A. No, I never paid any attention to how the wheel was.

Q. There would not have been anything, if you wanted to do it, or if the captain of the "Edith" wanted to do it, there would not have been anything to have prevented the tug running down this way and pulling the stern around while the captain starboarded his helm and threw the bow around?

Mr. CAMPBELL.—That is a hypothetical question which I object to on the ground that this witness has not yet been shown to be qualified to answer. He is simply a deck-hand on board of this tug, not a man who was in command of the tug, or a man who was ever shown to have been in the command of a tug.

Mr. SUTRO.—The question simply calls for whether there was anything in the position of the tug to have prevented him from doing this maneuver; he was there.

The COURT.—Of course, that is manifest, without the question.

Mr. SUTRO.—I would simply like the record to show it, because the captain testified that is precisely what he tried to do; instead of doing it the tug let go.

(Testimony of Richard C. W. O. Kraatz.)

The COURT.—If you mean there was no obstruction in the way—

Mr. SUTRO.—Q. Was there anything in the position of the tug that prevented that.

The COURT.—(Continuing.) To prevent her coming around, he may testify to it. [164]

Mr. SUTRO.—That is not exactly what I meant. I meant was there anything in the position of the tug that would prevent him going to the ship's starboard and pulling her stern around?

The COURT.—Pulling the stern around, that is another matter, whether it is feasible or not is probably a question that he is not able to answer; you may get into the record the fact, if it be a fact, that there was no obstruction there that would prevent the tug making the maneuver, if it was powerful enough to push her around.

Mr. SUTRO.—I withdraw the question.

Q. There was nothing in the way that would prevent the tug from making a swing to the starboard of the "Edith" while the captain starboarded his helm, and pulling the stern around?

A. There were several barges lying there.

Q. Where were they lying?

A. They were lying somewhere around Pier 30 or 32, I would say.

Q. Down here? A. Yes, somewhere.

Q. I am talking about the time when you were opposite Pier 44; was there anything in the way of the tug doing that at that place?

A. No, not just in that very place, no.

(Testimony of Richard C. W. O. Kraatz.)

Q. I am talking about the time when you let go of that line. You understand that? A. Yes.

Q. You say that that twelve-inch hawser which was lying on the bow of the tug—was that twelve-inch hawser lying on the stern or the bow?

A. On the stern of the towboat.

Q. Did that have a wire pennant on it?

A. Yes.

Q. How about that wire pennant—how long was it? A. About 16 fathoms, I would say.

Q. 16 fathoms? A. Yes.

Q. That would be 96 feet? A. Yes.

Q. Could you tell us how high the forecastle of the "Edith" [165] was above the stern of the tug?

A. No; it was quite a height looking up.

Q. I do not expect you to give us these things in feet and inches. Just give us an estimate of how high you think that was above the stern of the tug?

A. I would say all of fifty feet.

Q. It surely was not more than that, was it?

A. No—50 feet—probably a little more or a little less—anyway, 50 feet I will say.

Q. If you had been so situated that you could have passed this hawser to the "Edith," the method of doing it would have been to put the pennant through the hawse pipe, would it not?

A. Through the chock.

Q. Through the chock, you call that? A. Yes.

Q. Now, about how far below the forecastle-deck was the chock?

(Testimony of Richard C. W. O. Kraatz.)

A. It was on top of the forecastle.

Q. It is on top of the forecastle?

A. It is on top.

Q. So that the forecastle would be about 50 feet, you think, above the chock on the stern of the tug?

A. Yes.

Q. The mate of the "Edith," when you refused to pass him this line, said "That is a bum tugboat, which has no lines"; Is that what he said?

A. Yes.

Q. As a matter of fact, didn't you have some other lines?

A. Well, we had other lines, yes, but not fit for that kind of work.

Q. Is it your testimony that this 12-inch hawser was the only line that was fit for that kind of work?

A. That is the only one we had.

Q. The only one you had?     A. Yes.

Q. Above deck or below deck?

A. On the top of the deck.

Q. But you did have some other lines on that tug, didn't you, that could hold the "Edith"?

A. No, none what was fit for it; [166] they are too small.

Q. Didn't you have a six-inch working line on board that tug?

A. We had a six-inch line that we had used to tie the vessel up with, that is 20 fathoms long—tie it to the dock with.

Q. Where was that?

A. That was laying on the deck.

(Testimony of Richard C. W. O. Kraatz.)

Q. What other lines did you have on board?

A. A couple of seven-inch lines.

Q. Where were they? A. On the deck, too.

Q. How long were they? A. 20 fathoms, too.

Q. Two lines 20 fathoms each? A. Yes.

Q. What other lines did you have on board?

A. Another 6-inch bow-line.

Q. How long was that? A. 20 fathoms, also.

Q. Where was that? A. In the bow.

Q. Where were the 7-inch 20 fathom lines, in the bow, or in the stern?

A. One in the bow and one in the stern.

Q. Did you have any breast lines?

A. We had a breast line at the time, but it was no good.

Q. What was the size of it? A. 7-inch, too.

Q. How long was it? A. 20 fathoms, also.

Q. Where was it? A. On the bow.

Q. You say it was no good; you mean it was an old line? A. Yes.

Q. What other lines did you have?

A. Those are the only lines we had.

Q. Did you have any lines below? A. No.

Q. Then the only line that you had longer than 20 fathoms was this 12-inch hawser? A. Yes.

Q. How long was that?

A. That I don't know; 120 fathoms, I believe it is.

Q. 20 fathoms? A. 120 fathoms.

Q. Somewhere over 100 fathoms, anyhow?

A. Yes, I think it is 120. [167]

Q. How much of that line that you got from the



(Testimony of Richard C. W. O. Kraatz.)

“Edith” did you take out from the bow?

A. We got all of 30 fathoms or 35 fathoms.

Q. 30 or 35 fathoms? A. Yes.

Q. That would be from 180 to 205 feet?

A. Yes.

Q. Now, when you maneuvered with the “Edith” out of Pier 44, when you came down here, I believe you said you had somewhere around 20 or 25 fathoms. A. Yes, 150 feet, I would say.

Q. About 150 feet? A. 25 fathoms, it was.

Q. And you had four lines, each of them 20 fathoms long, on your deck at the time that you refused to give them a line opposite Pier 38: Is that correct? A. Yes.

Q. Did you tell them what the conditions of the other lines was? You say the breast-line was a used-up line, or not a good line. How about the 6-inch bow-line?

A. They were both of them worn out from other boats before we got them.

Q. How about the 7-inch lines?

A. They were in fairly good condition.

Q. The same condition?

A. Pretty fair condition.

Q. Would you say that they were in as good condition as the line that you got from the “Edith”?

A. No, they were not.

Q. They were not? A. No.

Q. How about the six-inch lines that you just testified to, or was that your bow-line?

A. We had in the bow one 6-inch line and one in

(Testimony of Richard C. W. O. Kraatz.)

the stern, which we used to tie up the vessel with alongside of the dock.

Q. About this 6-inch line that you had in the stern, you have not told me what the condition of that was.

A. Anything but good.

Q. That was the worst of the lot, was it?

A. No, it was not the worst, but it was anything but good.

Q. None of these lines were as good, as I understand you, as the line which you got from the "Edith"? A. No. [168]

Q. At that point opposite Pier 38? A. No.

Q. When you left Pier 44 you understood, did you not, that the plan was to pull the "Edith" out some distance, wherever you thought it was proper, or your captain thought it was proper, drop the line and then come around and pick the line off the bow and take her up to Hunter's Point. Isn't that what you understood?

A. Yes, as a rule that is done; I don't know just at the present time how the captain was going to work it, but that is as a rule how it is done.

Q. As a rule it is done that way? A. Yes.

Q. That is, taking into consideration the strong ebb tide and the wind, he would drop the stern line and come around to the bow? A. Yes.

Q. Pick her up at the bow and then take her on up? A. Take her up to Hunter's Point.

Q. So far as you know, that is what he planned to do in this case?

A. Yes, that is the way it looked to me.

(Testimony of Richard C. W. O. Kraatz.)

Q. You have performed that maneuver before, have you?     A. Yes.

Q. You expected the engines of the vessel to stop, didn't you, while they are taking in the line when you cast it off?     A. Yes.

Q. Otherwise it is likely to foul the wheel?

A. Otherwise it is likely to foul the wheel.

Q. They have to haul that line in before they can start up again?     A. Yes.

Q. And then by the time they get the line in you plan to be pretty near the bow, ready for another line, don't you?     A. Yes.

Q. You expected the "Edith" to drift during this maneuver, did you not?

A. I don't know what this captain expected.

Q. I mean you would expect the "Edith" to drift?

A. She would drift a little, I suppose.

Q. She would be bound to drift some distance?

A. She would be [169] bound to drift some distance.

Q. While she was drifting, you would get in the bow and pick up a line and go on?     A. Yes.

#### Redirect Examination.

Mr. CAMPBELL.—Q. When she backed out of the slip, what effect did the tide and wind have upon the two vessels, or upon the "Edith"; did she go straight out of the slip, or did the tide sag her down?

A. The tide shoved her down toward 44 or 42, swept her down.

Q. At the time that you actually let go of the line, out of your hands, where were you with respect to

(Testimony of Richard C. W. O. Kraatz.)

the end of 44 or 42?     A. How far away?

Q. Which pier were you off the end of?

A. We were off Pier 42, I would say.

Q. Pier 42?     A. Yes.

Q. Why did you let go of the line at the time that you actually let it go out of your hands; why didn't you hang on?

A. I would have gone overboard if I did hang onto it.

Recross-examination.

Mr. SUTRO.—Q. You said this morning that you had to let go because there was too much weight on it. Is that correct?     A. Yes.

Further Redirect Examination.

Mr. CAMPBELL.—Q. Was the pull upon the line in your hand increased at all when the "Edith" began to turn her wheel ahead?

A. No—it might have been a little, but when there was too much weight, got to be too much weight on it, I let it go; that is all there was to it; otherwise I would have held longer onto it, if there had not been an increase of the weight.

Further Recross-examination.

Mr. SUTRO.—As a matter of fact, there was a tremendous [170] bight in that line was there not?     A. There was some bight in it.

Q. It was a pretty good bight; you said a little while ago it was about a 10-fathom bight?

A. A 10 or 15—there was about 15 fathoms trailing behind.

(Testimony of Richard C. W. O. Kraatz.)

Q. That was 60 feet of line approximately, and that is what you were holding up against the tide, weren't you?     A. Yes.

Q. You could not hold it any longer; is that right?  
A. Yes.

The COURT.—Do you think at the time you let go of the line that the vessel was off Pier 42 instead of Pier 44?     A. Yes, it was closer to 42 than 44.

Mr. SUTRO.—In view of that answer, if you were giving the position now at the time you let go of the line, you would move this little marble farther out, opposite Pier 42?

A. Yes, just a little further down; it might have been 42 and 44, but I think it was a little closer to 42.

Q. That is opposite?     A. Yes.

### **Testimony of John Taylor, for Respondent.**

JOHN TAYLOR, called for Respondent sworn.

Mr. CAMPBELL.—Q. Are you in the employ of the Shipowners & Merchants Tugboat Company?

A. Yes.

Q. Were you on the tug "Fearless" at the time of the accident to the "Edith"?     A. I was.

Q. A year ago?     A. Yes.

Q. What was your position on the tug?

A. Fireman.

Q. What do you know of the making fast of the line when the tug first went into the slip?

Mr. SUTRO.—If your Honor please, I object to that question, what does he know of it. He can ask



(Testimony of John Taylor.)

what he saw and what he did, not what he knows about it. [171]

Mr. CAMPBELL.—All right. When the tug first went into the slip, what did you do?

A. Backed in alongside the "Edith."

Q. Did you make fast to the "Edith"?

A. That is when I came on deck.

Q. When you came on deck? A. Yes.

Q. Where were you before coming on deck?

A. I was down in the engine-room.

Q. Down in the engine-room?

A. Before I came on deck.

Q. When was it that you backed alongside of the "Edith"?

A. When I came on deck I helped them to get the line on.

Q. Where had the tug been prior to that?

A. Laying at a head-line at the end of the pier.

Q. How was the line passed aboard the tug from the "Edith"?

A. It was passed aboard on the port side.

Q. How was it passed aboard your tug?

A. Around the bitts, with the eye over the bitts.

Q. How did they get it aboard, do you know?

A. We took it aboard with a heaving-line from the pier.

Q. Where was it fastened on your tug?

A. On the bitts, to the towing bitts.

Q. From which side of the "Edith" did that line lead? A. It led from the port side.

Q. What had the line been used for by the "Edith"?

(Testimony of John Taylor.)

before it was passed to you?

A. Used to make it fast to the pier.

The COURT.—Q. You got it from the pier?

A. We got it from the pier.

Mr. CAMPBELL.—Q. How much line was paid out? How long was that line when you started to pull?

A. As near as I can say about 90 feet.

Q. What happened when you began to pull on it?

A. It parted.

Q. Where?

A. Just a little ways from the splice. [172]

Q. Did the "Edith" have any stern lines out at the time that line parted?

A. Only the one that we had.

Q. Did the "Edith" have any stern lines out to the dock?

A. She was let go altogether; when we started to pull her out the line parted.

Q. Did the "Edith" have any of the mooring lines out from her stern to the dock at the time you began to pull?

A. No; she was let go altogether when the line parted.

Q. What kind of a strain was put on the line?

A. Just a slow strain to tighten it up; we went dead slow with the engine.

Q. How long had you been pulling on the line before it parted?

A. I do not suppose she had made but a few revo-

(Testimony of John Taylor.)

lutions of the engine, that it all, when she tightened the line up.

Q. Then, upon that line parting, what happened to the "Edith"?

A. She went over toward Pier 54—alongside of 44.

Q. Was another line passed out to you?

A. There was another line passed out.

Q. From which quarter of the "Edith" was that?

A. The starboard quarter.

Q. What did you do with that line?

A. We made it fast to the bitts, as we did the first one.

Q. Did you assist in doing that?

A. I helped to do it.

Q. When that line was fast, then what was done?

A. We got a slow bell to tighten up, just went gradually until we got the strain on the line and then pulled her out—started to pull her out.

Q. How was the tide setting at that time?

A. That I don't know; I don't understand it.

Q. You don't know about the tide?

A. I don't understand the tides.

Q. What are you doing now on the tug?

A. Fireman. [173]

Q. At that time, what was your position on the tug? Were you a fireman at that time?

A. I was firing at that time.

Q. How long was that line which was the second line which was passed to you?

A. The second line?

Q. How long would you say that was?

(Testimony of John Taylor.)

A. When we started pulling out?

Q. Yes.

A. I should say between 140 and 150 feet when we got the full length of it.

Q. What was done with that line after you got away from the dock; just tell us what took place?

A. After we got away from the dock?

Q. Yes, after you pulled the "Edith" out of the slip.

A. We pulled her out, and when we got out in the stream I came on deck and stood by the line and was told to let it go off the bitts.

Q. Told by whom?

A. The captain; he told me to take it off the bitts—we had stopped then—me and the deck-hand held onto the line until such time as the captain said let go; just as he said let go, the tide pulled the line out of his hand; the captain said to let go of the line, and it pulled out of his hand.

Q. Out of whose hand?      A. The sailor's hand.

Q. Kraatz's?      A. I don't know his name.

Q. Did you notice at that time whether the ship's propeller was working or not?

A. The ship's propeller was working, backing all the time, as she was coming out; I couldn't say before we left.

Q. While you were actually coming out of the slip between the two piers, where were you?

A. I was down working in the engine-room giving the engine some oil.

Q. Now, at the time that you took the line off from

(Testimony of John Taylor.)

the bitts and before you threw it over the side of the tug—at the time you took it off the bitts was the propeller of the “Edith” working or [174] stopped?

A. The wheel was stopped when the line went over the stern; the wheel started again after the line went over—they started the wheel again.

Q. How far out do you think that you were from the “Edith” at the time that the line was let go?

A. At the time they let the line go?

Q. Yes.

A. I should say it was about 80 or 90 feet; it might be over 90 feet.

Q. Between the time that you took the line off the bitts of the tug and the time that you let it go from the tug, was anything done to the line?

A. After we took the line off the bitts, we started to haul it in, before we let go of the line, because the two ships will come together—they were hauling the line in.

Q. How were they hauling it in?

A. Hand over hand.

Q. How many men were hauling it in?

A. I seen two there.

Q. After the line was let go from the tug entirely, what did you do?     A. I went down below.

Q. When you came on deck again, where was the tug?     A. Underneath the bow.

Q. Underneath the bow?     A. Yes.

Q. Did you assist in receiving the bow-line from the “Edith”?



(Testimony of John Taylor.)

A. Yes, I helped to take the line on and put it on the bitts again, the head-line.

Q. What were they doing when you actually came on deck?

A. I don't know what they were doing on deck; I heard a lot of hollering and shouting; that is all I know; I don't know what was doing.

Q. How soon after you got on deck was the line coming down from the forecastle?

A. No—I had to stand there until they got the line over the bow.

Q. Then what did you do with that line?

A. We ran it over [175] the bitts and made it fast.

Q. What was the tug doing then?

A. Getting a slow bell to go ahead.

Q. Which way did you move? A. Went ahead.

Q. Did you go on a line parallel to the keel of the "Edith," or how?

A. That I could not say; I didn't take much notice.

Q. Where were you when they put a strain on the line? A. Standing against the engine-room door.

Q. Where was the tug then with respect to the "Edith"? A. Ahead of the "Edith."

Q. Directly ahead, or how?

A. As near as I could tell you, just slanting off the bow.

Q. How did they put the strain on that line?

A. By dead slow.

Q. Then what happened?

A. At the time they were going dead slow the line

(Testimony of John Taylor.)

was surging out all the time—nobody there to make it fast.

Q. Surging out from where?

A. From the ship; she was not made fast properly; then somebody came on the fore-castle-head and made it fast; I don't know who it was, it was too far to see, who made it fast, but it was made fast around the bits; I was just inside the engine-room when that parted.

Q. Where did that part?

A. I could hardly say—about 50 feet or something over the stern; I could not say exactly.

Q. Do you recall?

A. I am not quite sure how it was.

Q. Whereabouts were you with respect to the piers at the time that second or third line parted?

A. The third line?

Q. At the time this last line parted.

A. I was standing up in the engine-room.

Q. But where were the vessels then with respect to the piers?     A. The piers?

Q. What piers were they opposite?

A. I could not say which pier [176] we were off when the head-line parted; I could not say that.

Q. What happened after the head-line parted?

A. I went down below—you mean after the line parted or when I came on deck again—our captain was making toward the ship when I came on deck again.

Q. What happened after he came on deck?

A. All I know is I stood there watching the ship

(Testimony of John Taylor.)

at the time she was at the end of the pier—I couldn't say the number of the pier—she run into the pier, and then she started to go ahead and go off the pier herself.

The COURT.—As she struck the pier, was that at the time you came on deck?

A. She struck the pier at the time I came on deck.

Mr. CAMPBELL.—Q. When she left the pier, did she leave with your assistance?

A. No; she came away with her own assistance—she came away herself.

Cross-examination.

Mr. SUTRO.—Q. Mr. Taylor, you were standing on the stern of the tug when the tow-line went over the stern, that is, the first line which dropped when you were opposite Pier 44? A. Yes.

Q. You say after that line got over the stern the ship's propeller started to turn. Is that correct?

A. Yes.

Q. Then if I understand you, the "Edith's" wheel did not start to turn before the line was cast off from the tug? A. No.

Q. It did not pull the line out of the deck-hand's hands? A. Working the ship didn't pull it out.

Q. Who told you to take the line off the tug's bits?

A. The captain.

Q. At that time the "Edith's" engines were not turning?

A. The "Edith's" engines were turning when we took it off the bits.

Q. They were turning when you took it off the

(Testimony of John Taylor.)

bitts? A. Yes, she was backing. [177]

Q. She was backing? A. Yes.

Q. While she was backing he told you to take the line off, did he? A. Yes.

Q. By the time you got it off the bitts, she had stopped turning her wheel. Is that correct?

A. Yes.

Q. Now, at that particular time there was not any reason why you could not have put it on the bitts again, if you had wanted to, was there?

A. At the time we got it off the bitts and got it out the wheel stopped.

Q. That wheel, before it stopped, had been going astern? A. It was backing aft.

Q. You are sure of that? A. Sure.

Q. Now, you got the first tow-line which you took from the "Edith"—I am talking now about the first one. A. Yes.

Q. You got that from the dock did you?

A. Yes.

Q. Who got it off the dock?

A. Me and two of the sailors.

Q. You and two of the sailors? A. Yes.

Q. You went up there and took that line off the dock?

A. We did not get it off the dock; we fetched it from that with a heaving-line,—we brought it aboard with a heaving-line.

Q. Did you take your own heaving-line up from the dock?

A. Yes—threw it on the dock—one of the deck-hands threw it on the dock.

(Testimony of John Taylor.)

Q. Then you went up on the dock?

A. I went up on deck and helped pull it aboard.

Q. Did you yourself go on the dock?     A. No.

Q. Who was on the dock that made the heaving-line fast to the "Edith's" line?

A. I don't know who it was; some of the pier men, I suppose.

Q. Some of the workmen?

A. I don't know who it was.

Q. Who told them to make that line fast up there?

A. I don't know. [178]

Q. How did you come to do that? Who told you to do it?     A. Make the line fast?

Q. Make the heaving-line fast to the line that was on the dock.

A. One of the deck-hands did that; I just came on deck and helped to pull it aboard.

Q. Do you know who told the deck-hand to get that line off the dock?     A. No.

Q. Did you see Mr. Driver on that day?

A. I did.

Q. He was your superior officer; he was the chief engineer?     A. Yes.

Q. Were you supposed to work under his instructions?     A. Yes.

Q. Did you see him down around his cabin at any time on that day?

A. Yes, I saw him at the stand, working the engine.

Q. Where is the engine-room on the "Fearless"?

A. Right aft.



(Testimony of John Taylor.)

Q. Right aft?

A. Yes, pretty near aft; you can't call it right aft; it is pretty near aft.

Q. Pretty near aft; towards the stern?

A. Yes.

Q. When you go below, where do you go?

A. I go through the engine-room and down a ladder.

Q. That is below decks?      A. I am below decks.

Q. Did you see Mr. Driver down below decks at all?      A. Mr. Driver is standing on top.

Q. He didn't go down below decks?      A. No.

Q. At no time?

A. He had no business down there.

Q. He was not down there at any time, you say?

A. No, no time at all.

Q. Just tell us who the crew of the "Fearless" were on that day?

A. There was one deck-hand there, and Captain Sam—that is the only name I know him by.

Q. The captain?

A. The captain; myself; another deck-hand called Alf. Benson; he is not here; he is up in the country.

Q. Mr. Driver?      A. The cook. [179]

Q. Mr. Driver?      A. Mr. Driver.

Q. The deck-hand who testified, Kraatz?

A. Another fireman.

Q. Another fireman?

A. Gus Raymond; he was down below.

Q. Anybody else?

A. The first assistant; he was not there that day.

(Testimony of Charles F. Boster.)

sels then? How was the tug bearing to the steamer?

A. Right astern of her.

Q. Were you able to form any judgment as to the approximate length of line which the tug had out?

A. That I could not say.

Q. You could not say.

A. Not exactly, right to the length.

Q. What would be your best judgment?

A. In the neighborhood of 150 or 160 feet, stern to stern.

Q. What did you do while they were backing out of this slip?

A. I was just observing there, looking down the bay, that is all. [181]

Q. Did you see the tug when it let go of the steamer? A. Yes.

Q. Did you observe at that time the distance off the piers that the "Edith" was? A. Yes.

Q. What in your judgment was the distance it was off Pier 46, we will say?

A. I would say between 700 and 750 feet.

Q. What could you see, as you stood on the rock, that day?

A. I could see right down to Pier 26.

Q. Right down to Pier 26?

A. And quite a distance outside of it.

Q. Which side of the line from the position that you were at on Mission Rock to Pier 26 were the "Edith" and the "Fearless"?

A. Outside of the line.

Q. Outside of the line? A. Yes.

(Testimony of Charles F. Boster.)

Q. Was there anything inside of the line, from the position that you were in at Mission Rock to Pier 26 on that day?     A. No.

Q. Did you after the "Fearless" let go the stern line—did you observe what she did?

A. Well, the first time I seen her after that was under the bow; I did not see her movements, other than she passed around to the starboard side.

Q. Did you observe what she did from that time on?     A. Not closely.

Q. Did you observe the two vessels continuously up to the time the "Edith" went onto Pier 32?

A. I seen the vessel strike.

Q. You saw the vessel strike?     A. Yes.

Q. What were you doing in the meantime? What were you doing between the time when you first saw the tug taking out the "Edith" until you saw her strike?

A. I was answering the telephone.

Q. Where was the telephone?

A. Situated around the corner of a house in a booth.

Q. When you came out of that, where were the vessels?

A. They had just parted the third line at the time.

Q. Parted the third line at that time?

A. Or at least parted [182] the head-line.

Q. From that time on, where were you—what were you doing?

A. Standing in about the same position as I first was standing.

(Testimony of Charles F. Boster.)

Q. What were you doing?

A. Waiting for a telephone call.

Q. From where?

A. From the company's office.

Q. Where was the company's office located?

A. Pier 15.

Q. During the time you were waiting, what were you looking at?

A. I was waiting for a steamer to come out from Pier 38 that I was going to assist into China Basin.

Q. Where is China Basin with respect to Mission Rock? A. Just beyond Pier 54.

Q. Is that what is marked "China Basin" on this plant? A. Yes.

Q. Where were you going to assist it into?

A. The vessel was coming out of 38 and going to 54.

Q. Did you observe the condition of the wind and tide that day?

A. Well, I know about what it was.

Q. What was it?

A. Strong southeasterly breeze, strong ebb tide.

Q. How does the ebb tide run with respect to the ends of the wharves?

A. It runs straight to the ends of the wharves.

Q. What do you mean by straight to the ends; parallel with the ends?

A. Parallel with the ends.

Q. Is there any distinction made in the towage business in San Francisco between towing a vessel and assisting a vessel? A. Yes.

(Testimony of Charles F. Boster.)

Q. Just what is it?

A. If you tow a vessel you are in full charge.

Q. And if you are assisting a vessel, what?

A. The master of the ship is in charge.

Q. When you are in charge of the vessel, where do you, as master of the tugboat, take your place?

A. Tie up to the vessel and go aboard of her.

Q. Tie up to the vessel and go aboard of her?

A. Yes. [183]

Q. From what vantage point do you navigate the two vessels?

A. From the bridge of the vessel.

Q. When you are simply assisting, what do you do?

A. Well, if you assist you stand by and have a line from the stern or bow, whichever the case may be.

Q. Where do you go in performing your service; do you go aboard the steamer, or remain aboard the tug?

A. Stay aboard the tug.

Q. Now, I will ask you whether or not, in your judgment, as a master of towboats, it would have been possible to have turned the "Edith" around that day after she had been pulled out of the slip between Piers 46 and 44 under the conditions of wind and tide, by the tug attempting to pull her stern to the tug's port, or to the "Edith's" starboard while the "Edith" went ahead under a starboard helm and attempted to swing her bow to port. Do you understand the question? A. I do.

Q. What is it?



(Testimony of Charles F. Boster.)

A. That it was impossible, under the weather conditions and tidal conditions.

Q. With the "Edith" drawing more water aft than she was forward, and with her light, being unladen, what is your judgment as to whether or not it would have been possible for the tug to have swung the stern of that steamer so as to have kept it toward, so to speak, her bow, and thereby make it possible for the steamer to have turned its bow against the wind and tide?

A. In my judgment it could not be done.

Q. It could not be done? A. No.

Q. What is the customary way of turning a vessel under conditions of tide and wind such as you had that day, when you want them to proceed against the wind and tide after they get out of the slip, as the "Edith" proposed to go that afternoon—how would you execute the maneuver customarily?

A. Put a line from the stern and pull him out of the slip, go around underneath the bow immediately and get another line and start him up. [184]

Q. When you get your line from the bow, how do you pull him?

A. Pull him right into the wind and tide.

Q. When you say "pull him into the wind and tide," you mean pulling the bow into the wind against the tide?

A. Pulling the bow into the wind against the tide.

Q. I will ask you whether or not there was anything to have prevented—was there any obstruction to have prevented—the "Edith" from dropping her

(Testimony of Charles F. Boster.)

anchors at the time that you saw the tug leave her stern and pass around to her bow?

A. There was nothing to prevent it, in my estimation.

Q. There was nothing to prevent it, in your estimation; was there any obstruction there in the waters that would make it impossible for her to drop her anchors? A. No.

Q. What can you say as to whether or not, in your judgment, there was room for her to have dropped her anchors at the time that you saw the tug at the bow of the "Edith"?

A. I should judge she had room enough to anchor.

Cross-examination.

Mr. SUTRO.—Q. How far away were you from Pier 44 when you stood there on Mission Rock. Look at that map, Captain, and see if you can get some assistance from the scale of it.

A. I see no scale here.

Mr. CAMPBELL.—600 feet to the inch.

Mr. SUTRO.—Just approximately. Will that ruler help you any, Captain?

A. This would be about 3000 feet.

Q. 3000 feet from where you were standing to Pier 46?

A. Not to Pier 46, no; that is to Pier 34. About 1800 feet.

Q. That would be about 3000 feet to Pier 34. Did you see the "Edith" drifting in distress?

A. I could not say in distress.

(Testimony of Charles F. Boster.)

Q. Did you see her drifting?

A. I seen her drifting.

Q. Did you see the direction she was drifting into?

A. I did. [185]

Q. Did you know what was sticking out?

A. What was sticking out?

Q. Into the bay there? A. I did.

Q. You knew that Pier 32 was considerably longer than these other piers? A. Yes.

Q. You said, Captain, that the "Edith" was about 750 feet out? A. Yes.

Q. And that you saw her drifting?

A. I saw her drifting, yes, for a little ways.

Q. She would drift right into the piers, wouldn't she? A. I wouldn't say so, no.

Q. If she was drifting straight, she surely would have drifted in, would she not?

A. You can't call that drifting straight in, can you?

Q. I am asking you. I want to get the facts. She was 750 feet out from the ends of the piers, as I understand you? A. Yes.

Q. She struck the pier inside of a couple of thousand feet?

The COURT.—The captain objects to the word "straight."

A. I don't see where you can get it straight.

Mr. SUTRO.—She was drifting in towards the piers?

A. If she was drifting straight in she would go in towards where she came out.

(Testimony of Charles F. Boster.)

Q. She was drifting in toward the piers, was she not?     A. Toward the piers, yes.

Q. Wouldn't you consider that she was drifting in distress?

A. I would in one sense, and I would not in the other.

Q. Didn't it look to you that she was getting into trouble?     A. No.

Q. You were able to calculate the distance between the tug and the "Edith," were you, from where you stood?     A. Yes.

Q. You were not able to see she was drifting in towards Pier 32?

A. I couldn't say whether she was drifting in toward Pier 32, or not. [186]

Q. Did you see her drift as a matter of fact?

A. I did.

Q. You saw her drift toward the piers did you?

A. A little bit.

Q. A little bit?     A. Yes.

Q. Enough to bring her 700 feet in didn't she?

A. Yes—not 700 feet in.

Q. Not 700 feet?

A. It would not bring her 700 feet in, because Pier 32 sticks out beyond the others 150 or 175 feet.

Q. She was 700 feet out from the short piers?

A. No; that would make her 700 feet out from Pier 44.

Q. I say she was 700 feet out from the shorter piers, not from the long piers; 46 and 32 are both long piers, aren't they?     A. Yes.

(Testimony of Charles F. Boster.)

Q. She was 700 feet out from the shorter piers?

A. Yes.

Q. So she would drift in about 550 feet, if she was 750 feet out? A. Possibly.

Q. Did you make any effort to go to her assistance? A. No.

Q. Did it occur to you to do it at all? A. No.

Q. Do you know how far the "Edith" was from Pier 32 when the third line parted, the line that you talked about here? A. I could not say.

Q. Could you tell whether she was 200 feet out?

A. I could not.

Q. Could you tell whether she was 100 feet out?

A. No, I could not.

Q. She might have been only 50 feet out?

A. She was more than 50.

Q. But it might not have been more than 100?

A. From which pier, do you say?

Q. From 32? A. From 32.

Q. When the line parted?

A. I could not say.

Q. You could not tell?

A. I could not say; that is out of my line of vision, pier 32 was by the ship. [187]

Q. Where was the vessel when you saw the line part? A. In the neighborhood of Pier 36.

Q. Could you tell whether she was 200 feet out from Pier 36? A. I could not, no.

Q. You couldn't tell whether she was 100 feet out?

A. She was over 100 feet out.

Q. Somewhere between 100 and 150 feet?



(Testimony of Charles F. Boster.)

A. More than that. I would not stipulate exactly what it is.

Q. I do not want you to stipulate exactly, but I want to know what is your best estimate of how far she was out from Pier 36?

A. I could see part of Pier 32—a good 170 feet off—inside of it.

Q. Then you are judging by the fact that you could see this end of Pier 32, and the “Edith” was inside of your line of vision?

A. It was just closed by a little bit.

Q. She was inside of your line of vision?

Mr. CAMPBELL.—What do you mean by inside of line of vision?

Mr. SUTRO.—I mean she was inside there (illustrating).

A. I do not mean to say inside altogether. I say Pier 32 was just hidden by the vessel the end of it; maybe a few feet of it, the shed.

Q. Pier 32 is about 79 feet longer than Pier 34 and is 8 feet longer than Pier 36?

A. What pier, 32?

Q. According to this map Pier 32 is 805 feet and the other 618 feet? A. Yes about.

Q. 193 feet? A. Yes, I should say so.

Q. Longer than Pier 36? A. Yes.

Q. So you judge that the “Edith” was somewhere within 200 feet of Pier 36? A. About that point.

Q. What is the depth of water there?

A. I could not say.

Q. Where she was?

(Testimony of Charles F. Boster.)

A. I could not say; about 5 fathoms of water; six maybe. [188]

Q. 5 or 6 fathoms of water? A. Yes.

Q. What kind of a bottom is it? A. Mud.

Q. Soft mud? A. No; it varies.

Q. How much chain do you allow when you cast an anchor in a place like that with that depth and that kind of a bottom?

A. It depends what you are going to use the anchor for.

Q. To hold the ship.

A. 10 fathoms, 12 fathoms would do.

Q. 36 fathoms would do?

A. I did not say 36 fathoms.

Q. About 60 or 72 feet?

A. At the water's edge.

Q. At the water's edge? A. Yes.

Q. Then you have to add to that the depth of the water?

A. No; we are not adding anything to the depth of water at all; we are adding from the water to the hawse-pipe.

Q. How much do you allow?

A. 10 fathoms at the water's edge.

Q. Do you make any allowance for the tide?

A. No—that depends upon where you are anchoring.

Q. Right opposite Pier 36, where you say the "Edith" should have dropped her anchor.

A. I did not say she should have dropped her anchor at Pier 36; she had plenty of time all the way

(Testimony of Charles F. Boster.)

along until she got abreast of 40 and 38 to drop her anchor.

Q. It is your view that she should have dropped her anchor somewhere between the time that she was opposite Pier 44 and the time that the third line broke?

A. She had plenty of room between that space if she had wanted to drop it.

Q. Your idea is that she should have dropped the anchor before she ever got to Pier 38?

A. I didn't say she should have dropped it; I say she could have dropped it.

Q. But it is your idea, is it not, Captain, that there was hardly time enough for her to drop her anchor after she got down to where she was opposite Pier 36?

A. She could have dropped it there.

Q. Would not the tide have swung her around on that pier? [189]

A. On which pier do you mean?

Q. On 36. A. It may have, yes.

Q. The safest place for her to have dropped her anchor would have been somewhere between the position where she was opposite Pier 44 and the position that she got into opposite Pier 36? A. Yes.

Q. And if she was going to drop her anchor at all, or if you had been in charge and you were going to drop your anchor at all you would have done it some place between the position which I will mark "1" and the position which I will mark "2"?

A. Yes.

(Testimony of Charles F. Boster.)

Q. You understand that this position "2" is opposite Pier 36? A. Not quite opposite.

Q. It is supposed to be there? A. About 38.

Q. This is only an approximation, you understand, for the purpose of illustration. But after she got into that proximity over there to Pier 36, in the proximity of that, she was not in a good position to drop her anchor, was she?

A. That I could not say.

Q. Do you carry a 12-inch hawser on your tug?

A. No.

Q. Have you seen the 12-inch hawsers that were carried by some of your tugs, your company's tugs?

A. I have.

Q. Have you seen the one that the "Fearless" carries?

A. Well, I have seen some of the ones that she has carried, yes.

Q. They usually have an iron pennant on, haven't they? A. A wire?

Q. Yes. A. Yes.

Q. What is the size of that pennant?

A. That I cannot say.

Q. Approximately, in diameter? A. It varies.

Q. What is the thickest pennant you ever saw, in diameter?

A. An inch and three-quarters, an inch and a half, and an inch and a quarter.

Q. Somewhere around there. I am talking now about the diameter, not the circumference.

A. I am speaking about the diameter. [190]

Q. What is the length of these pennants?

(Testimony of Charles F. Boster.)

A. Well, that I could not say; they vary.

Q. They vary within what limits?

A. From 12 to 20, 25 fathoms.

Q. That is the pennant alone? A. Yes.

Q. There is no difficulty in a couple of men handling one of those pennants, is there?

A. Well, it takes more than a couple of men.

Q. How many would it take?

A. It would take three good men.

Q. Take three good men to handle a pennant?

A. Yes.

Q. What do you think one of those pennants weighs? A. That I could not say.

Q. How much per foot?

A. I could not judge that; I have never weighed them.

Q. It would not be over two pounds a foot, would it? A. That I could not say.

Q. Can't you give us any approximation?

A. I have never seen it weighed.

Q. Haven't you ever handled these pennants?

A. Yes.

Q. Have no idea of the weight of them?

A. I know they are heavy.

Q. Do you think a 12-fathom pennant—that would be 72 feet—would weigh 100 pounds?

A. Well, that I could not say.

Q. Somewhere around there?

A. Well, I don't know.

Q. But at any rate it would take three good men to handle one of those, you say?



(Testimony of Charles F. Boster.)

A. Not less than three.

Q. Not less than three; maybe more?

A. Maybe more, yes.

Q. Do you know how many men the "Fearless" had on board to handle the hawser and pennant they used there?

A. That I could not say.

Q. You know she had three, don't you?

A. I know she had three, yes, but she has got steam to heave it in with; they use steam.

Q. Now, you testified here, Captain, that it was not possible, on the 4th of March, 1916, for the "Edith" to come out of Pier 44, put her helm starboard so as to throw her bow to port bring her [191] stern around to starboard, and the tug at the same time keep on pulling the stern around. Is that always true, or is it true on that day because of the wind and tide?

A. I don't think it could be done under those conditions; it is a very ticklish job.

Q. Suppose you had flood tide, the tide running up in a contrary direction from that which it was running, and suppose instead of having a southeasterly wind you had a northwesterly wind; do you mean to tell me that it would not be possible to bring your vessel out of one of those slips and turn her bow with the wind and tide? A. How do you mean?

Q. If you had a flood tide and the wind blowing in the opposite direction from which it was blowing on that day, would it not be possible to bring a vessel out of one of those slips, if you were going to Hunt-

(Testimony of Charles F. Boster.)

er's Point, turn her bow with the wind and tide—could not you do that?

A. How do you mean with the wind and tide?

Q. Suppose the wind and tide were going in the opposite direction from what they were going on this day—

A. Yes.

Q. Couldn't you turn the bow up towards Hunter's Point with that wind and tide?

The COURT.—Do you mean by this maneuver you are speaking of?

Mr. SUTRO.—The reverse of this maneuver.

The COURT.—By pulling around the stern?

Mr. SUTRO.—Bringing her out, pulling around her stern, and in the meantime have the captain throw the bow over.

The COURT.—That is an element you have been omitting from your question.

A. It might be possible to do it if you have got a man on the ship that understands the business thoroughly, and he will work the ship with your tug; otherwise it can't be done.

Mr. SUTRO.—Q. Suppose, Captain, you had a flood tide and the wind blowing in the opposite direction from that which it was blowing [192] on this day, so that it would be blowing up towards Hunter's Point, so that the tide would be running toward Hunter's Point, and you wanted to go toward Hunter's Point, and you brought that ship out from one of those slips, wouldn't it be perfectly feasible to put your helm to starboard, so as to throw your bow to port and have the tug pull your stern around at the

(Testimony of Charles F. Boster.)

same time? A. Not the way it is done.

Q. I say, would it be perfectly feasible to do it; in other words, to turn your bow with the wind and tide? A. I would not do it.

Q. Would it be feasible to do it, Captan?

A. It might and might not; I could not say that; I say I would not do it.

Q. Are there any conditions at all in the bay of San Francisco under which you could turn a vessel coming out of Pier 44 toward Hunter's Point by starboarding the helm? A. There is, yes.

Q. What conditions are those?

A. The wind right off the land.

Q. And the tide running, I suppose—

A. Slack tide.

Q. And a slack tide?

A. And maybe a little bit of ebb; it could not be very strong.

Q. Then the principal reason, really—isn't this a fact—that the principal reason why you think that the captain's way of trying to do this thing on that day was not possible, was because there was a strong ebb tide and strong southeast wind: Isn't that so?

A. Yes.

Q. In other words, you do not think when he came out of this slip he had any business to try to pivot his ship, if that is what he tried to do, in the face of that wind and tide. That is your view, is it not?

A. Yes.

Q. There might be conditions such as a slack tide

(Testimony of Charles F. Boster.)

and off-shore wind where he could do that: Isn't that so?

A. He could do that, as I said before, by taking a line over the stern first, and then receiving a line or getting a line to the tug over the bow afterwards [193] and—

Q. (Intg.) That is the way you would have done it; that is not my question. The captain, perhaps—I do not know, but the deposition discloses in this case that the captain backed out of that slip and tried to pivot his ship, that is, turn his helm to port, thinking that the tug would pull his stern to starboard. Now you think that that could not be done, do you? A. Not that day.

Q. I say, there are conditions under which that could be done, such as a slack tide and off-shore wind: Isn't that so?

A. An off-shore wind right off the land, yes, but not blowing right on.

Q. But I say, with a different wind and a different tide it could be done, couldn't it?

A. It might be; I couldn't say.

Q. You say that when you take full charge of a vessel you tie up and go aboard; do you mean by that you tie your tug right close up to the ship?

A. Yes, sir.

Q. Do you always do that when the vessel has no motive power of her own?

A. When the vessel has no motive power of her own we generally do that, yes, sir.

Q. Do you always do it? A. Not always.

(Testimony of Charles F. Boster.)

Q. Don't you frequently, for instance a vessel with her engine still for some reason or other, or a sailing vessel, perhaps, don't you frequently take a stern line from a vessel and tow her at her bow-line and tow her out? A. At times, yes, sir.

Q. When you do that your place is on the tug, is it not? A. Yes, sir.

Q. In other words, you are always on your tug unless the tug is lashed alongside the ship; Isn't that correct? A. Yes, sir.

Q. And if the tug is not lashed alongside the ship, then your place is on the tug; isn't that so?

A. Yes, sir.

Q. In other words, you never send your tug any distance from the [194] ship without being on it yourself?

A. I am always on it if it is away from the ship's side.

Q. You frequently take full charge of a tow when you are tied up alongside, don't you?

A. We do, yes, sir.

Q. So it is not a necessary test to say you are not tied up alongside; you may or may not be in full charge: Isn't that so?

A. Well, it depends on the job.

Q. Some jobs you are in full charge when you are tied up alongside and some jobs you are not in full charge when you are tied up alongside: Isn't that so? A. It all depends.

Q. I say, that is so, isn't it?

A. Yes, in some cases.



(Testimony of Charles F. Boster.)

Q. Did you see any barges off Pier 32 that would have obstructed any maneuvers of the tug and the "Edith" on that day?

A. There were some barges anchored off there.

Q. Did they obstruct your view? A. No, sir.

Q. Did you think they were in the way of the maneuvers these vessels were trying to make between 44 and 36?

A. They may have been if they tried to go around with the tug pulling the stern inshore.

Q. Where were those barges?

A. In the neighborhood of 34, or 32, or somewhere along there; I could not just say; they were in that neighborhood.

Q. How far in were they? A. Pretty close in.

Q. Pretty close in? A. Yes, sir.

Q. Could you see them from Mission Rock?

A. Yes, I seen them.

Q. From Mission Rock? A. Yes.

Q. Were they lying outside the "Edith" or inside the "Edith"?

A. There were some outside and one in about the line as she let go; they may have been a little bit outside, I could not say.

Q. Then the barges lay between the "Edith" and Pier 32, did they?

A. No, not between the "Edith" and Pier 32; I said [195] outside of Pier 32.

Q. Outside of Pier 32?

A. Yes. When the tug first let go of the "Edith"

(Testimony of Charles F. Boster.)

I could see the barge outside the stern of the "Edith."

Q. Then they would not be very much in the way of any maneuvers around 44 or 36 or 28 or 42, would they? A. No. They may have been.

Mr. SUTRO.—That is all, Captain.

Redirect Examination.

Mr. CAMPBELL.—Q. Captain, assuming that the "Edith" was only backed out of the slip so that her bow was only 30 or 40 feet off the end of Pier 44, and then she commenced to execute this maneuver of going ahead on her starboard helm and expecting to have the tug pull her stern to starboard, would it have been possible, under any circumstances, to have executed the maneuver with the steamer within that distance of Pier 44?

A. Utterly impossible under the circumstances.

Q. Would it have been possible in any way to have turned the steamer "Edith" when she was within the distance of 30 or 40 feet off Pier 44 so as to have headed her for Hunter's Point Drydock?

A. No, sir.

Q. Have you ever, in your experience in the tugboat business, seen a steamer attempt to turn within a distance of 30 or 40 feet off the end of the pier after she had backed out of it? A. No, sir.

Q. If the tug had let go of the stern line of the "Edith" at a time when the "Edith" was within 30 or 40 feet of the end of Pier 44, I ask you whether or not she ever would have drifted, with that wind and tide, down onto Pier 32?

(Testimony of Charles F. Boster.)

A. Do you mean and still keep backing?

Q. No, I mean dead in the water. If at the time the tug cast off the stern line the "Edith" had only been 30 or 40 feet off the end of Pier 44, I ask you whether or not she would have ever [196] drifted down onto Pier 32?

A. It would have been impossible.

Q. Have you ever removed a steamer from her pier, having charge of the operations, by remaining on your tug and having the tug *remove* from the side of the vessel? A. No, sir.

Q. When you have had charge of the towing operations and you remained on board your tug, and had your tug away from the side of the vessel, what kind of vessels were you moving?

A. We would consider them dead vessels, no steam and no power.

Q. When you have power on the vessel that you are moving, and you have charge of the operations, where do you take your station?

A. We generally tie up alongside, unless in the case of bad weather.

MR. CAMPBELL.—I offer in evidence this plan of the waterfront. Have you any objection, Mr. Sutro, to this plan going in evidence?

MR. SUTRO.—No objection.

(The document is here marked Claimant's Exhibit "B.")

Recross-examination.

MR. SUTRO.—Q. Could you pull a vessel in this position shown here alongside of Pier 44 stern first

(Testimony of Charles F. Boster.)

straight out into the stream at right angles to the tide, or nearly right angles, and then put your tug into the wind and tide and hold her there until the vessel swung and then proceed against the wind and tide with her?

Mr. CAMPBELL.—Against it or with it.

A. I don't understand your question; you don't put it clearly enough.

Mr. SUTRO.—Q. I will try and put it again. If you pull the vessel out stern first and practically at right angles to the tide, or nearly so—

A. (Intg.) You didn't say "stern first" before.

Q. Well, you will excuse me for the omission, won't you? I say now "stern first," and then headed your tug into the wind and tide, holding the vessel there, wouldn't she swing so that [197] she could proceed under her own steam in the same direction you were headed?

A. In the same direction I was headed?

Q. I mean in the opposite direction you were headed.

A. Under favorable conditions, yes, it may be able to be done; I could not just say.

Mr. CAMPBELL.—I think you are confused again by your directions. Just repeat the question to him.

A. (Continuing.) I don't know what he is talking about.

Mr. CAMPBELL.—You listen and you will find out what he is talking about.

(Testimony of Charles F. Boster.)

A. (Continuing.) He don't know how to put a question.

Mr. SUTRO.—Q. Did you understand the question?

A. I didn't get it, I didn't get it clear enough.

Q. Wouldn't a perfectly feasible and proper way to perform this maneuver from the tugboat point of view be to do the following: Pull this vessel out stern first into the stream, head your tug into the wind and tide. Wouldn't the vessel then swing with the wind and tide and be able to make a complete turn and proceed under her own steam?

A. Not in all cases; it may be under some conditions; under others it would not be.

Q. I mean on this day, wouldn't it have been a perfectly proper and perhaps the best way from the tug's point of view, to take this vessel out and when she got out here clear of the pier, head your tug into the wind and tide so as to hold her stern and let her bow swing, and then let her go under her own steam up to Hunter's Point?

A. I would not tackle a job that way.

Q. You don't think that would be the right way to do it? A. No.

Q. Despite the fact that she would be going with the wind and tide if she did that?

A. She may not be able to turn there. The shipping that was anchored below would not allow her to turn [198] there that day.

Q. Wouldn't the tide carry her bow around and down?



(Testimony of Charles F. Boster.)

A. I am not speaking about the tide; you are speaking about making the turn there.

Q. Now, Captain, I might not make myself clear, but I think I do. A. I don't think you do.

Q. If your vessel came straight out of the slip and your tug held onto the stern, wouldn't the tide swing the vessel's bow with the tide in the opposite directions from the tug?

A. Well, it may and it may not.

Q. Do you mean to tell me that there is any question but what the tide would swing the bow of the vessel?

A. If the wind was in a different direction it would not.

Q. You know how the wind was on this day, don't you?

A. The wind was stronger than the tide, in my estimation.

Q. Wasn't the wind going very largely in the same direction as the tide?

A. Across it, almost diagonally across it.

Q. Just tell me without any possible case what the actual fact would have been on that day if that vessel had been pulled out from Pier 44, taking into consideration the tide and the wind as they were on that day, and she had been pulled out 700 feet, and the tug had held onto her stern, tell me whether her bow would or would not have swung around?

A. Her bow would have swung down stream.

Q. And then if the tug cast off, there would be nothing to prevent the vessel continuing on down

(Testimony of Charles F. Boster.)

stream and making her turn to starboard and going on up to Hunter's Point?

A. She may or may not.

Q. What would have been in the way? Wouldn't she have been going with the wind and the tide?

A. Yes, sir.

Q. Then, what would have been in the way?

A. You are asking me [199] one question and then trying to put two into it; I don't understand exactly what you want to get at.

Q. I think you understand perfectly, Captain.

Mr. CAMPBELL.—But you are asking a question, Mr. Sutro, and then immediately proposing an answer; you are confusing him.

Mr. SUTRO.—I don't think he is as confused as he is trying to be.

Q. What would have been in the way of the vessel proceeding, she having pointed this way with the wind and tide, and making a complete turn?

A. She may have been able to do it.

Q. What might have been in the way. You say something might have been in the way.

A. The shipping that was anchored down below may not have allowed her to do that.

Q. If she was out 700 feet from Pier 44 she had considerable sea room, did she not?

A. She may have had enough, and she may not have had enough; I could not say that.

Q. She could have got still more sea room by going further out? A. She may have.

Q. In other words, it would be perfectly feasible

(Testimony of Charles F. Boster.)

for her to make a starboard turn if she was out going with the wind and the tide?

A. A starboard turn?

Q. Yes.

A. What do you mean by a starboard turn?

The COURT.—Q. Well, let us call it a turn to starboard.

A. A turn to starboard, that is different.

Mr. SUTRO.—Q. It would have been perfectly feasible, would it not?

A. I don't know; it may have.

The COURT.—Q. What would have prevented it? Was the wind too strong, or was the tide too strong, or were both the wind and the tide too strong?

A. In that case the tide and the wind would have taken the vessel down on the shipping on that day.

Mr. SUTRO.—Q. So you say now, that having been turned in the [200] position I show here, with the bow toward the opposite direction from Hunter's Point, you mean to say she could not have gone with the wind and tide and made this kind of a turn, a turn to starboard, and proceeded down to Hunter's Point?

A. She may have been able to do it and she may not; I could not say whether she could, or not. I don't know. The conditions might have proved unfavorable.

Q. But you say that is not the proper way to do it? A. No, it is not.

#### Further Redirect Examination.

Mr. CAMPBELL.—Q. When you said that the

(Testimony of Charles F. Boster.)

wind was diagonally across the tide, how did you assume the tide was running?

A. Parallel to the ends of the docks.

Q. How does the southeast wind blow?

A. Pretty well on the docks.

Q. This way?      A. Yes.

Q. It is not shown on this drawing, Captain, but where was the shipping you speak of?

A. There were a couple of barges anchored off Pier 32, and in that neighborhood,—maybe a little bit further up toward Pier 34; I could not say exactly where they were; I don't quite remember.

Q. If the steamer be swung as Mr. Sutro described, and attempting to make this turn, in making that turn would she be carried with the wind and the tide down along those piers?

A. Down toward the shipping; it would be a hard matter to turn a ship of that size under the conditions and the way the ship was flying light in a place of that kind; it would have been almost impossible in that space between 46 and 44, or wherever the vessel was lying there, to make that turn outside of those barges, because the ship, flying with the wind and the tide, and she don't steer very quick, she would not be able to make that turn, in my estimation; of course, somebody else may have been able to [201] do it.

Mr. SUTRO.—Q. She could have gone out to Fort Point before turning if she wanted to, couldn't she?

A. You asked me the question about turning above the shipping.

(Testimony of Charles F. Boster.)

Q. Oh, no. She could turn anywhere she pleased.

A. But you didn't ask me that. Why didn't you ask me that question?

Q. Because I am not quite as quick as you are.

The COURT.—You made a circle there and you confined him to that.

The WITNESS.—You made a circle there and I was going by that.

Mr. SUTRO.—Q. Make the circle as large as you please. Wouldn't it have been a simple thing to pull that ship out stern first and hold her there until the tide turned her and then let her go about her business, making the largest turn she needed to make, and then go up to Hunter's Point?

A. That I could not say. It depended on the captain of the ship, what he wanted to have done.

The COURT.—Q. You said in some part of your testimony that this was always a ticklish maneuver, or I think you used the word "operation," pulling it around by the stern: Just what do you mean by that?

A. What do you mean, sir—do you mean turning inshore?

Q. I want to know what you mean; the language is yours. You were speaking of this operation, and you said it is always a ticklish operation; you were speaking of pulling a vessel around by the stern.

A. Well, if the man on the ship understands his business it is not a ticklish operation.

Q. Why is it a ticklish operation? What is liable to happen?



(Testimony of Charles F. Boster.)

A. The tug is liable to get into trouble, or the ship is liable to get into trouble.

Q. In what way? The word "trouble" is so general.

A. The tug may get in irons, but it very seldom happens. [202]

Q. Get in what?

A. Get in irons, the tug gets out of shape.

Q. Just what does that mean?

A. She gets so she can't pull no more.

Q. Any more at that particular time?

A. No, not at that particular time, any more than any other time.

Q. What puts a tug in irons? A. Carelessness.

Q. Then what happens to a tug when she gets in irons? A. She is finished, that is all.

Q. I know, but what particular injury is done to her?

A. She loses all power to do any more work; she is finished then.

Q. What is injured, her keel, her engine, or what?

A. No, but she is out of line, she cannot work any more, she has to let go the line.

Q. You mean on that particular job?

A. I don't mean for that particular job, I didn't say on that particular job.

Q. I don't know what you mean. What injury is liable to be done to a tug pulling a vessel around by her stern?

A. Well, if she don't keep in line she will get around this way and get alongside the ship; that is

(Testimony of Charles F. Boster.)

what in irons means, when the tug gets right flat alongside the ship after she starts to pull her out, she gets bow to bow, and she can't pull any more.

Q. She can't pull any more on that particular ship?

A. No. She can get out and get in shape again.

Q. I thought you meant the tug was injured forever. A. Oh, no.

Q. All that you mean is that she swings around in such a position that she cannot pull any more on that particular ship? A. On that particular line.

Q. Yes, on that particular line.

A. That is what I mean. [203]

### **Testimony of W. M. Randall, for Claimant.**

W. M. RANDALL, called for the claimant, sworn.

Mr. CAMPBELL.—Q. What is your business, Captain?

A. Tugboat master; at present I am in the office as the assistant superintendent.

Q. Of the Shipowners & Merchants Tugboat Company? A. Yes, sir.

Q. How long have you been a tugboat captain in San Francisco Bay? A. 26 years.

Q. Were you in the employ of the company on March 4, 1916? A. Yes, sir.

Q. Did you see anything of the "Edith" and the "Fearless" on that afternoon? A. Yes.

Q. Were you on any tug? A. Yes, sir.

Q. What tug were you on?

A. The tug "Restless."

(Testimony of W. M. Randall.)

Q. Where were you and where were they?

A. We were going up the bay, going into 38, and I seen the "Fearless" and the "Edith" off of 44 or 46. I was coming in here for a vessel at the time.

Mr. SUTRO.—Q. Pointing to Pier 38?

A. Yes, and I seen them up here.

Q. Off of Pier 44?      A. Yes, sir.

Mr. CAMPBELL.—Q. How far off of Pier 44, in your judgment, were they at the time that you saw them?

A. I should say from 750 to 900 feet, in that vicinity.

Q. What was the relative position of the steamer and tug at that time?

A. He was pulling her out on a stern line, but with very little sternway at that time.

Q. What did you do with your tug?

A. We went into Pier 38, into a Japanese steamer.

Q. What was the next you saw of the "Fearless" and the "Edith"?

A. He was down a little below this diagram, I should say.

Q. Opposite what pier?

A. About right here. I was in at 38, and [204] as I looked out he was right here.

Q. On which side of Pier 38 were you?

A. On the north side.

Q. You were in there for what purpose?

A. To take out a Japanese steamer.

Q. Where were you going to take her?

A. To 54.

(Testimony of W. M. Randall.)

Q. Was any other tug going to assist you with that steamer?

A. There was another tug coming to assist me, yes, sir.

Q. Do you know where that tug was at the time?

A. I didn't know at the time but I afterwards found she was at Mission Rock and was going to assist me when I got there.

Q. How far was the "Edith" and the "Fearless" off Pier 38 or Pier 36 at the time that you saw her in that vicinity?

A. I don't think this is a good diagram of—

Q. I didn't ask you that. I asked you, in your judgment about how far were they off the pier?

A. Oh, I presume 250 or 300 feet off of here.

Q. Which pier?      A. Pier 38.

Q. What were the relative positions of the tug and steamer at that time, when they were opposite Pier 38?

A. The tug was directly under her starboard bow.

Q. What was the last that you saw of them?

A. That was just it, just about the last I seen them; they either drifted down or got out of my line of vision.

Q. What did you do then?

A. I went to work on my job, to take the ship out.

Q. Now, Captain, I ask you whether or not, in your judgment, it would have been possible for the steamer "Edith," on being pulled out of the slip between Piers 46 and 44, to have turned and proceeded under a starboard helm against the wind and tide so

(Testimony of W. M. Randall.)

as to proceed to Hunter's Point Drydock if the "Fearless" had pulled the stern of the "Edith" to starboard by the tug starboarding [205] her helm?

A. Not at 700 or 800 feet off the dock; possibly about a mile away they might have done it, or half a mile away.

Q. Why do you say it could not have been done at 700 or 800 feet?

A. Too much drift, too much current down towards the dock; in other words, too much leeway.

Q. What would have happened, in your judgment, if that maneuver had been attempted, what would have happened to the two vessels?

A. Well, they would have went broadsides on the dock.

Q. What would have carried them broadside on the dock?     A. The tidal condition and wind.

Q. How was the wind setting that day with respect to the docks?

A. Very much on the dock, but not broadside.

Q. And how was the tide running?

A. About parallel with the docks, running right straight down the end, or thereabouts—it varies a little.

Q. What is the custom, Captain, in the port of San Francisco, with respect to a tug assisting and a tug taking charge of a towing operation, what is the difference in those two operations, according to the custom in the port of San Francisco?

A. In assisting, we generally consult with the cap-



(Testimony of W. M. Randall.)

tain or the pilot who is in charge of the vessel as to what they want us to do, and if they want us to take charge, we do so.

Q. What is the difference between the two operations, when you take charge and when you assist?

A. That is just about it; many times we consult, most of the times we do consult—always do so far as that is concerned.

Q. That does not explain anything to me. What do you do when you take charge of the operation?

A. We tell them what to do.

Q. Tell who what to do?

A. The captain, and the mates, etc., as to what we want done.

Q. And where do you take your station?

A. If we are alongside, on the bridge—if we are fast to them. [206]

Q. Have you ever taken charge of the undocking of steamers from San Francisco wharves without being on the bridge, if they have no steam?

A. Oh, yes.

Q. When the steamers have no steam, and you take charge of the undocking operations, and you don't have your tugboat alongside, how do you handle it?

A. On a line, and talking with the men on the ship, telling them what to do, and so forth.

Q. And where would you remain under those conditions? A. On the tugboat.

Q. In the assisting operation, what do you do, what is the difference between the two, what do you

(Testimony of W. M. Randall.)

do when you go to assist?

A. We usually look the job over and consult with the captain about the best way to do it.

Q. Do you make any distinction between assisting and taking charge?     A. Oh, yes.

Q. What is it?

A. If we are taking charge, and he has no steam, we usually take it more upon ourselves; if we are assisting, we consult with him.

Q. In an assisting operation, who is the managing head, the tugboat captain or the ship captain?

A. The master of the ship.

Mr. SUTRO.—Just a moment. I submit that he stated the facts and the conclusion will be drawn by the Court. I object to the question.

The COURT.—I would just as soon have his view of it, anyway. The answer will stand.

Mr. CAMPBELL.—Q. Who is the managing head in an assisting operation, who is the man in supreme command in an assisting operation?

A. The captain—the master of the vessel.

Q. Did you observe on that day as to whether or not there were any barges anchored in the vicinity of Pier 32?

A. No, I didn't notice that, although it used to be quite the custom for a barge [207] to be there—

Mr. SUTRO.—Just a minute: I object to that. He said he did not see any barges there.

The COURT.—Let that go out.

Mr. CAMPBELL.—That is all.

(Testimony of W. M. Randall.)

Cross-examination.

Mr. SUTRO.—Q. When you assist you say the master is in command? A. Yes, sir.

Q. His is what they call the dominant mind?

A. If you call it that.

Q. He gives the orders?

A. In very many cases.

Q. Always?

A. There are some exceptions to that, but usually it is the master of the ship. We would go and say to the master what he thought about doing so and so.

Q. You would sort of talk it over with him?

A. Yes, sometimes.

Q. Consult with him as to how it should be done?

A. Well, they a good deal rely on our judgment, of course.

Q. They rely a good deal on the judgment of the towboat man?

A. Oh, yes, a great many of them do.

Q. And the towboat man uses his own judgment as to when to cast off and when not to cast off?

A. On a great many occasions, but usually it is between them; they understand when it is going to occur, he would not cast off and the man going astern with his propeller, he would keep hold of him until he was stopped. That is what he would do.

Q. And then he would use his own judgment as to when he would cast off?

A. Oh, yes. Many times we would object to casting off if we thought there was going to be any immediate danger.

(Testimony of W. M. Randall.)

Q. You would call out, or something of that sort?

A. Yes, we would try to protect the ship.

Q. You say that this movement of turning a vessel by a starboard [208] helm, having the tug pull the stern to starboard, could not be done 700 or 800 feet away from the dock?

A. No, sir, not under those conditions.

Q. Not under the weather conditions on that day?

A. No.

Q. You would think that was an ill-advised attempt if it was attempted, in view of the tide and the wind?     A. Yes, sir.

Q. Of course, if the man did not pay any attention to the tide and the wind, or if they were not being considered, or if he was not familiar with them, there would be no objection to it then, would there? Eliminating tide and wind, there would be no objection to it, would there?

A. You mean slack water and no wind?

Q. Yes.

A. That is possible; but you have to work very much together on that, and—

Q. You—

Mr. CAMPBELL.—Let him finish his answer; you interrupted him.

Mr. SUTRO.—He finished his answer.

Q. You say it could have been done half a mile or a mile away?

A. On that particular day, yes; half a mile away if a man started he might finish it; I should not think any man would do it, though.

(Testimony of W. M. Randall.)

Q. Which leads me to ask you if it is not a fact that the objection to that maneuver is one based largely on conditions; there are conditions when it can be done and conditions when it cannot be done?

A. Close to the dock is the principal condition you have to consider.

Q. And the tide and the wind?

A. Tide and wind would be the second condition.

Q. You say that when you last saw the tug and the "Edith" the tug was right under the "Edith's" bow?

A. Yes, sir. [209]

Q. And then they started to drift?

A. They were both drifting; he had not the line out.

Q. He had not the line out?

A. No; they were both drifting then.

Q. And they were from 250 to 300 feet off Pier 38?

A. I think safely about that much.

Q. And still drifting in toward the piers?

A. I should think so from the wind; the direction of the wind should drift them in.

Q. About how much water is there there, Captain?

A. I should say roughly speaking there should be 6 or 7 fathoms of water there.

Q. How much chain do you allow when you drop an anchor in water of that depth, taking into consideration the tide and the wind that is running?

A. If we were going to moor the ship there and she was going to stay there for any length of time, we would give her lots of chain; if we were only going to temporarily swing her on an anchor, probably



(Testimony of W. M. Randall.)

15 fathoms outside of the hawse pipe would keep her there.

Q. She would drag a little, would she not, with that wind and tide?   A. More than likely.

Q. She would drag, would she not?

A. Yes, a trifle.

Q. And then her stern would swing around toward the docks?   A. Yes, sir.

Q. She couldn't do that unless she was a sufficient distance off from the docks?   A. No.

Q. She could have done that, in your opinion, when she was out here at Pier 44?

A. Anywhere down here—

Q. But when she was coming close—

A. (Continuing.) She could have done it then.

Q. How far out would she have to be?

A. At 200 or 250 feet he could have done it if he wanted to, but I don't know what the result would be afterwards.

Q. He could have swung her onto the piers if he wanted to? [210]   A. Possibly, or possibly not.

Q. The proper place to drop the anchor, if he was going to drop it, would be near Pier 44, between 44 and 38?

A. If he had been disabled, yes.

Q. Assuming now, Captain, that his line was foul, or he thought it was foul, and the tug did nothing, so that he was going to drop his anchor, the proper place to drop it would be somewhere in those positions between 44 and 38?   A. Oh, yes.

(Testimony of W. M. Randall.)

Q. And not wait until he got too close to the docks? A. Surely.

Q. Have you any of those wire pennants on any hawsers that you have? A. Yes, sir.

Q. And you know, as a matter of fact, that they run about the length of the one that was on the "Fearless," usually about 15 fathoms?

A. I guess usually 15 to 25.

Q. The pennant itself? A. Yes.

Q. And that would be about from 90 to 150 feet; so that if the vessel was about 50 feet above the bow of the tug, one of those pennants could be passed up, it would be long enough, would it not? A. Oh, yes.

Q. Do you know what the weight of one of those pennants is? A. No.

Q. Do you know the diameter? It has been testified here that it is about an inch and a half or an inch and three quarters. A. Yes, just about that.

Q. They weigh about two pounds to the foot, don't they, or one and three-quarters?

A. I should think about two pounds or two and a half; they are quite heavy; some of them are solid and some of them have a rope heart in them. That would make a little difference in the weight.

Q. The solid ones weigh about one and three-quarters pounds to the foot?

A. They should weigh more than the others.

[211]

Q. They would weigh about  $1\frac{3}{4}$  pounds to the foot, wouldn't they?

A. I don't say that, I am not sure of it.

(Testimony of W. M. Randall.)

Q. How many men do you think it would take to handle 50 feet of one of those wire pennants?

A. In what way do you mean?

Q. To haul it from the tug up the bow of the ship—a couple of men?

A. It would depend on your time; you could do it with one man if you had plenty of time; in a hurry-up job, you would want three or four men.

Q. But suppose you had two or three minutes to haul it up a distance of 30 or 40 feet, a couple of men could do it couldn't they?

A. In two or three minutes, you say?

Q. Yes.

A. Well, they could probably do it, but I would rather have three or four men to do it in two or three minutes.

Q. If you had three or four men on the stern of the tug— A. Oh, they have nothing to do with it.

Q. But they could pass it up.

A. They have nothing to do with it.

Q. Well, they can lift it up, can't they?

A. They simply put it out and see that it keeps clear of their wheel; they can't lift it.

Q. No, they can't throw it up, I know that, but they can clear it and help these fellows get it up, can't they?

A. Yes, if you can get it up without its kinking up, and so forth.

Q. A couple of men on the deck of the ship could handle it, couldn't they?

A. I don't think two men would get it up in two

(Testimony of W. M. Randall.)

or three minutes, because after you get it up to the deck of the ship you have to pull it back some little way to lay it; they couldn't do it.

Q. They couldn't lift 100 pounds?

A. Oh, they could lift it, but they have to do more than that, they have to do more than that.

Q. What else do they have to do?

A. They have to haul it back. [212] to where the bitt is.

Q. But if there are more men aft they could help them do that, couldn't they?

A. Oh, yes, the more men you have the better and the quicker you can do it.

Q. Do you buy this kind of stuff? Do you have anything to do with that in your capacity as assistant superintendent? A. No, very little.

Q. You have something to do with it, haven't you?

A. Not with the buying.

Mr. SUTRO.—That is all.

Mr. CAMPBELL.—That is all.

The COURT.—Q. Who determines whether you take charge or whether you assist, and when is that determined?

A. In the office they usually say to you to go out and assist such and such a vessel into the stream; if it is a flat tow, as we call it, they say, "Such a steamer has no steam, and you put her to the dock."

Q. That is determined in your own office?

A. Yes, usually we get directions in the office.

Q. And the directions are given to the masters?

A. Yes, we tell the masters which is which.

**Testimony of W. J. Gray, for Claimant.**

W. J. GRAY, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Captain, do you hold a master's certificate? A. Yes, sir.

Q. For how many years have you held one, or, rather, since what year have you held one?

A. Since 1874.

Q. During that time, in what business have you been engaged? A. Tugboat business entirely.

Q. Where? A. San Francisco.

Q. What has been your position?

A. Master for 12 years, and, [213] superintendent the rest of the time—manager.

Q. Who was the manager of the Shipowners and Merchants Tugboat Company on March 4, 1916, at the time of the accident to the "Edith"?

A. I was.

Q. Who is the manager now? A. I am.

Q. Is there any difference in the port of San Francisco between assisting and being in charge of a towing operation with your company?

A. Yes, sir, there is a great deal of difference, both as to charges and as to orders.

Q. Explain to the Court what that difference is?

Mr. SUTRO.—I have assumed, in not objecting to expert testimony along this line, that some witness that will be produced that will testify that the captain of this tug was assisting and not towing.

Mr. CAMPBELL.—Yes, we will prove that. Our captain has not reached port yet.

Mr. SUTRO.—You expect to put the Captain on?



(Testimony of W. J. Gray.)

Mr. CAMPBELL.—I do, yes, as soon as he reaches port.

Mr. SUTRO.—Then this is merely a matter of order of proof.

A. When we are engaged to assist a vessel out we give orders to the tug to go and assist that vessel from the dock; if it is a flat tow, we give them orders, we give them instructions how to do it, even to our old hands. The same way with an assist, we tell them what to do.

Q. For instance, in this particular towage, what was the towage rate on the "Edith" for assisting from Pier 46 to Hunter's Drydock?

A. I could not give that off-hand, but the difference would be less than half for assisting.

Q. Less than one-half of what?

A. Of the tow between the city and Hunter's Point. I could not give it off-hand. We have a regular printed rate. It is less than half—not over half, and [214] very likely less than half.

Q. Less than half the rate for a flat tow?

A. For a flat tow, yes.

Q. In a flat tow, what does the master of the tug do, what is his function?

A. He takes full charge of all operations connected with the transfer of that vessel from one point to the point he is going to.

Q. How does his supremacy of command compare with that of the master of the steamer, so far as that operation is concerned? A. Exactly the same.

Q. Are the two of equal command, then?

(Testimony of W. J. Gray.)

A. We take full charge if we tow the vessel; if we assist, the captain of the ship takes full charge.

Q. And in the assisting, where does the tug captain remain? A. He remains on his tug.

Q. And in the flat tow, where will he be?

A. He is on the bridge or the deck of the vessel; if the vessel has a bridge, he is on the bridge.

Q. Is there any difference in the custom here as to the use of lines in an assisting service and a towage service?

A. Yes. If a man wants the tug's hawser he engages for it and pays for it; but it is customary to take the vessel's lines in assisting work.

Q. Under what circumstances does the tug furnish the towing hawser? Under what conditions do you furnish the towing hawser?

A. When it is engaged for and when we go to sea, or to Port Costa.

Q. What do you mean by that?

A. When they engage the tug's service, they say "We want the tug's hawser."

Q. Is there any extra charge made for the use of the hawser? A. Yes; I told you that.

Q. What is the extra charge made?

A. That ranges from \$5 to \$25; it depends on the service. Going to sea with a sailing [215] ship it costs \$25; short moves around the waterfront \$5.

Q. In an assisting service, however, such as docking or undocking steamers at the San Francisco wharves, what is the custom as to who supplies the towing-line?

(Testimony of W. J. Gray.)

A. As a general proposition in assisting the ship supplies the lines. There are exceptions to that, as I say, when we charge for it. For instance, the "Northern Pacific" and the "Great Northern," when we tow them to the dock they always furnish the line; when we take them away from the dock we furnish the line.

The COURT.—Q. Is that by agreement?

A. Yes, sir.

Mr. CAMPBELL.—Q. In assisting, do you ever furnish the towing line to the steamer, without special arrangements therefor being made in advance?

A. They always have to make special arrangements where we furnish a vessel with a line; there is a charge also.

Q. Now, Captain, you saw nothing of this accident? A. No.

Q. Assume that the steamer "Edith" was pulled out from the southerly side of Pier 44 by the "Fearless," until she was in a position we will say approximately 700 feet off the end of Pier 44, or we will say sagging down toward Pier 42; I will ask you whether it would have been possible, in your judgment, for the steamer "Edith" to have been turned in her course to port so as to head toward Hunter's Point by starboarding her helm and going ahead on her propeller, and by the tug starboarding its helm and attempting to pull the stern toward the "Edith's" starboard, with the wind blowing southeast that day strong, and the tide running in?

(Testimony of W. J. Gray.)

A. It would have been impossible.

Q. Why?

A. If the ship had been on an even keel, and we had plenty of room, it is possible we could have done it. In this case the ship drew 8 feet foreward and 12 feet aft, and the effect of the wind on her bow would have kept her off, so we could not have got [216] that bow to the windward. The strong wind would pay the bow off quicker than we could pull on the stern, the bow would drift faster than the stern, because of drawing less water, and we could not overcome that drift.

Q. What, in your judgment, would have been the proper operation to pull that steamer out of that slip and to swing her bow in her course so as to head her for Hunter's Point, with the wind southeast and the tide ebb?

A. Swing her with the tug, or with her own wheel.

Q. With the tug what would have been the proper operation?

A. You could have taken her out the way this was done, or you could have taken her out and let her go down the front and swing herself around.

Q. When you say "as this was done," what do you mean?

The COURT.—As this was attempted.

A. Yes, as this was attempted. There was no trouble about handling that ship at all. Just haul her out and give her the line back and then slip under her bow and haul her off; in the meantime he

(Testimony of W. J. Gray.)

will use his propeller to keep himself from drifting in.

Q. From drifting in toward what piers?

A. In toward the piers.

Q. How would he use the propeller?

A. Backing.

Q. If he had attempted the other maneuver, by going down along the front—what do you mean by that?

A. He could have hauled him out and hauled him astern to the wind and tide, then you could cast her off and the ship could have moved down inside—there was a barge lying there, he could have gone down inside of that, and he could have made his turn at the ferries, when he got down to Howard street, or below Market street. It could have been done that way. It would have taken longer—that is all.

Q. If the “Edith” when she was in a position approximately 700 feet off the end of Pier 44 or Pier 42, had fouled her propeller [217] with the line so the propeller could not have been used, what, in your judgment, would have been good seamanship for her to have done at that time?

A. Anchor until I cleared my wheel, but I would never be satisfied until the engine stopped, I would keep that wheel going until she stopped. The mere fact of a line in the wheel don’t stop the wheel. We sometimes make a trip to Port Costa with a line in our wheel.

Cross-examination.

Mr. SUTRO.—Q. Captain Gray, what is your



(Testimony of W. J. Gray.)

position with the company that you mentioned here?

A. Manager.

Q. Will you state again what the name of that company is?

A. Shipowners & Merchants Tugboat Company.

Q. That is the claimant here, is it not, the owner of the tug "Fearless"? A. The owner; yes, sir.

Q. Without going into any detail about the matter, you are personally interested in the Merchants & Shipowners Tugboat Company—if that is the name?

A. Very slightly, outside of the salary proposition.

Q. Your principal interest in the company is by reason of your position? A. Yes, sir.

Q. And you are the operating head of the concern, aren't you? A. Yes.

Q. Are you also a stockholder?

A. A very small one.

Q. As I understand you, Captain, it would have been a perfectly proper thing to have taken the "Edith" stern first out of this dock and then let her bow swing with the wind and tide and then let her go under her own steam, she having cast off the tug, and make such turn as the shipping permitted, always going with the wind and tide and then turning to port and going on up to Hunter's Point?

A. That could have been done.

Q. It would have been a perfectly proper way to do? [218]

A. It could have been done. All the difference is it would have taken longer and more time because

(Testimony of W. J. Gray.)

you had to gather headway with the current and wind.

Q. It would have taken longer?

A. Very much longer.

Q. It would have been a safer maneuver than the other?     A. No, sir, no safer.

Q. No safer?

A. No, sir, but it would have been safe, but it would have taken a considerably longer time, that is all.

Q. The maneuver that was attempted involved the casting off of the stern line and running around to the bow and picking up another line, didn't it?

A. No, sir.

Q. Did not the maneuver that was attempted involve the tug casting off the stern line?

A. Yes, casting the stern line off. I am talking of—

Q. Just answer the question, if you will please, Captain and we will get along much faster. And did not the maneuver also involve the tug going around the starboard bow of the "Edith"?

A. No, sir.

Q. It also involved the taking of a line from the starboard bow?

A. Not necessarily; they could take a line from either bow.

Q. It involved the dropping of the line and the tug making a turn and going to the bow of the "Edith," didn't it?     A. No, sir.

Q. Do you think that the maneuver that was attempted on that day, namely, to tow the "Edith" out

(Testimony of W. J. Gray.)

stern first, drop the line, go to her bow and take her bow-line and turn her into the tide and wind was a proper maneuver? A. Yes, sir.

Q. Didn't that maneuver involve dropping the stern line and taking the bow-line? A. Yes, sir.

Q. Didn't it also involve the tug coming from the stern of the "Edith" to the bow of the "Edith"?

A. You see, you don't quite grasp it. The proper thing for the ship to have done was [219] to keep on backing after he got his line, and let the tug stay right where she was and when the ship's bow got opposite the tug he could have swung a line around and turned her right around; it would have saved all the time and trouble of the tug making that switch around; he was headed just about right, pretty close to right. All the ship would have to do would be to continue her stern board until the bow was equal to the tug and then slip the line on and away she would go.

Q. The tug would have remained stationery?

A. Practically so.

Q. The ebb tide and the wind would not have affected the tug's position?

A. It has a slight effect; the tide has the same effect on both hulls, the wind has a little more effect on the lightship than the tug.

Q. But you don't think it would have been necessary for the tug to turn her engines at all for this maneuver?

A. Oh, yes, I would have the tug so I could turn her back or ahead, just as was necessary.

(Testimony of W. J. Gray.)

Q. I asked you if the tug did not have to go to the bow of the "Edith" for this maneuver, Captain, and I will ask you that again.

A. And I will explain to you that the ship could have continued on astern and when her bow got opposite the tug's stern she could have passed the line to her. That is the quickest way.

Q. Then it is your view that the proper thing to do was to cast off the 200 feet of line and keep the ship's wheel going astern so that she would get opposite the tug and the tug would not drift very much but would be near the ship's bow?

A. I told you that the first thing you do is to cast the line off and then haul it in and keep the ship going astern.

Q. Would you have the wheel turning astern while it was being hauled in? A. No, sir. [220]

Q. It would foul, wouldn't it?

A. It might foul.

Q. It would not be very good seamanship to keep the wheel turning while the line was being hauled in, would it?

A. Not if it trailed under it; if it trailed to one side, it would be all right.

Q. You know where the captain stands, don't you?

A. Yes, and I know he has a pair of eyes to look forward and aft.

Q. He is on the bridge, isn't he?

A. Yes, and the second mate furnishes the eyes aft.

Q. He stands up on the bridge, doesn't he?

(Testimony of W. J. Gray.)

A. Yes.

Q. And when he is told that 200 feet of line has been cast off his stern, proper seamanship requires that he should stop his engines, does it not?

A. Yes, sir.

Q. You would not stand on the bridge of a vessel and keep your propeller turning if you were told there was a stern line 200 feet in length hanging over your stern, would you?

A. If I was drifting into the dock I would find out whether it was, or not; I will not stop my engine when my ship is going into the dock or on the rocks; I will keep it going back.

Q. If you can just forget, Captain, that you are a partisan, or an interested witness, we will get along so much faster. I want to treat you as respectfully as I can.

Mr. CAMPBELL.—I don't think he is deserving of any lecture.

Mr. SUTRO.—Will you please repeat the question, Mr. Reporter?

(Question read by the reporter.)

A. I say no. I would stop the propeller while I was getting that line in.

Q. The maneuver, which I first asked you about, you described as perfectly safe, pull him out, turn him around with the tide and wind and let him make his big turn; you said that was safe.

A. I didn't understand the question, turning around with tide and wind; I would turn him up against the tide and the wind, turn [221] his



(Testimony of W. J. Gray.)

stern up against the tide and the wind, and then let him go with the tide and the wind and when he gets headway enough port his wheel and make the turn. That can be done, but it takes a longer time.

Q. But it is safe?      A. Yes, it is safe.

Q. That is, this movement coming around like this?

A. Yes, as long as you give him room enough to start.

Q. You think that other movement we have been talking about is safe?

A. Just as safe, and very much quicker.

Q. Do you think the first movement I referred to just now could have been performed in this case?

A. Are you alluding to his hauling the stern up to the tide and wind?

Q. Yes.      A. Yes, sir.

Q. It could have been performed safely?

A. Yes, sir.

Q. Was this particular maneuver performed with success? That admits of an answer "Yes" or "No."

A. Was it performed with success?

Q. Yes.

A. No sir, it takes two to perform either of these movements.

Q. You have answered the question, Captain, and your counsel will ask you further questions if he thinks the testimony requires an explanation.

A. Bear in mind that the other one was not safe unless the captain of the ship performed his duty.

(Testimony of W. J. Gray.)

Mr. SUTRO.—I move to strike that out, your Honor.

The COURT.—Let it go out.

Mr. SUTRO.—Q. Captain you made considerable investigation into this case, didn't you, at the time the occurrence was first brought to your attention?

A. I always investigate cases very thoroughly.

Q. That is one of the things you attend to is it?

A. Yes, sir.

Q. And you verified the answer in this case?

A. I suppose so. [222] It is so long ago I would not want to say.

Q. It is quite a time ago. Captain, you may assume that this is a correct copy; if Mr. Campbell says it is you will accept it as such, won't you?

A. Yes.

Q. Now, you are satisfied, are you not, from your investigation of this matter, and you admit that as soon as the tow-line was cast off the tug "Fearless" a signal was given to the master of the steamship "Edith"? A. No, sir.

Q. I will read you what you say. Is it or is it not the fact that "Claimant admits that a signal was at once given to the master of the steamship "Edith" by the mate of said steamship who was standing on the poop-deck, that the tow-line had been cast off by the master of the tug "Fearless"?"

A. Yes, sir. We notified—

Q. That is all, Captain.

A. You don't want me to explain?

(Testimony of W. J. Gray.)

Q. No. You can explain if your counsel thinks it is necessary.

Q. Are you familiar, Captain, with the 12-inch hawser that was on the "Fearless"? A. Yes, sir.

Q. You have seen that line?

A. Oh, no doubt, I must have seen it.

Q. Has that line attached to it what is called a wire pennant? A. Yes, sir.

Q. What is the length of that pennant?

A. They range about from 20 to 25 fathoms on big boats and 15 on small ones.

Q. Who did you buy these pennants from?

A. From different people.

Q. Do you happen to remember who you bought this pennant from?

A. No. We buy them by the coil.

Q. Did you get it from Macomber & White?

A. We got them from the American Steel & Wire Company. I think we bought three or four coils.

[223]

Q. Can you ascertain for me, Captain, just who you bought this pennant from that is on the tug "Fearless" and what its size and weight is?

A. I think I can.

Q. You can ascertain the size and weight of it, anyhow, can't you?

A. We can get the size and the weight.

Q. And will you do that for me?

A. I will. I am not yet sure whether we can trace who we bought it from. There are three different firms we buy the wire from.

(Testimony of W. J. Gray.)

Q. If you will give me the size and the weight, that will do. I was merely going to refer to the catalogue, if I had the name, to see the size and weight. And can you also get me the length of it?

A. The chances are that pennant has been condemned; I am not sure about that. Anyway, we have a standard length.

Q. You heard the testimony here in court to-day, didn't you?     A. Yes, sir.

Q. Would you say that that hawser was suitable for the purpose of towing operations?

A. Yes, sir.

Q. It was?     A. Yes, sir.

Q. And the only reason it was not passed out was that it was too heavy: Is that the idea?

A. The only reason it was not passed out is that it was not engaged for.

Q. It was not engaged for?

A. No. If it had been engaged for the captain of the tug would have had orders to furnish the hawser.

Q. And then he would have furnished it?

A. Yes, sir.

Q. But the reason he did not furnish it was that the "Edith" had not engaged it and he had no right to furnish it?

A. He had no right to volunteer the hawser.

Q. In other words, when the first officer of the "Edith" called for the hawser, he was calling for something that the captain had not engaged for?

A. I didn't understand he called for it until the last moment. He passed out his own lines twice;

(Testimony of W. J. Gray.)

the third time I [224] understand he called for it. It was impossible for them to get that hawser up onto that forecastle in the time required.

Q. It was too heavy?

A. It was too heavy to get up there.

Q. Then you would say it was not suitable for this operation?

A. Yes, it was suitable for that operation, but we were working under conditions.

Q. Was it suitable for the purpose of performing the maneuver for which this tug was engaged?

A. Yes, but understand the hawser was not engaged for.

Q. I understand that. But it was suitable for the purpose of performing the maneuver for which this tug was engaged?

A. It was suitable to perform any movement.

Q. You heard the testimony this morning of Mr. Driver when I asked him that question and he said that this hawser was absolutely suitable for the performance of that maneuver that was attempted when the tug asked for a hawser off the starboard bow of the "Edith." He said it was a suitable hawser; is that your view of it?

A. Yes, if you furnish the suitable number of men to handle it. If you furnish two men to handle it, no, it is not suitable.

Q. Now, Captain, won't you just try and answer my questions and we will get along so much faster.

A. My dear sir, your questions have to have an explanation to make them intelligent.



(Testimony of W. J. Gray.)

Q. Either the questions or the answers, Captain, but your counsel will call for those explanations if he deems them necessary. I am not trying to lecture you, but we will get along so much faster if you answer my questions. I must ask you again if this hawser was a towing line suitable for the purpose of performing the maneuver which this tug attempted?

A. Yes, sir.

Q. Now, I want to read you the allegations of your answer in that connection, and ask you if you so stated, and if it is true, or not: [225]

“Claimant does admit that the first officer of said steamship asked said tug to pass a large 12-inch hawser lying on the stern of said tug, but that said hawser was so heavy that the men on the forecandle-head of said “Edith” would not have been able to have taken said hawser aboard, and it would not have been practicable to have passed said large hawser at the time, and that said hawser was not of the character of a towing line suitable for the purpose of performing the maneuver which said tug was about to undertake as hereinafter set forth.” Is that correct or incorrect?

A. We can use that hawser for that work.

Q. Now, Captain, I want to read you this:

“And that said hawser was not of the character of a towing hawser suitable for the purpose of performing the maneuver which said tug was about to undertake, as hereinafter set forth—” And “hereinafter” describes that maneuver; was that correct, or was it not correct?

(Testimony of W. J. Gray.)

A. Well, you can take it either way.

Q. Now, Captain, do you know whether there were any other lines on board this tug that were suitable for this maneuver?

A. No, all her lines were for other purposes. She only had the one tow-line.

Q. She had other lines on board, didn't she?

A. Yes, but they were all—

Q. That answers it. I have asked you a good many times, Captain, just to answer the questions.

Mr. CAMPBELL.—Mr. Sutro, I have never seen a witness yet who was not given an opportunity to explain.

Mr. SUTRO.—But he will not answer the questions. Of course, if your Honor wants an explanation, he can make it.

The COURT.—No, the Court does not require an explanation, but if the witness thinks an explanation is necessary he is [226] entitled to make it. I am not objecting at all. Any way is satisfactory to me, so long as we get the testimony in.

Mr. SUTRO.—I am willing to let him talk, but it seems to me I am entitled to an answer to the question without a lecture. Now, where was I?

The COURT.—You were asking him on whether he had other lines aboard.

Mr. SUTRO.—Oh, yes. You may proceed, Captain.

A. Yes, there were other lines aboard, but they were not suitable for that kind of a job.

Q. What kind of a job were they not suitable for?

(Testimony of W. J. Gray.)

A. Where you want a long line.

Q. Were they suitable for short-line jobs?

A. Yes.

Q. Were they in good condition?      A. Yes.

Q. All of them?

A. We generally have two in first-class condition and the others a little worn.

Q. Do you say you had two lines in first-class condition on the tug on this day, besides the hawser?

A. We invariably keep two good lines aboard.

Q. Do you say you had two lines in first-class condition on the tug on this day, besides the hawser?

The COURT.—That question can be answered by “Yes” or “No”; it is the shortest and quickest answer?      A. Yes, sir.

Mr. SUTRO.—Q. Will you describe the size of them?      A. 7-inch.

Q. Both of them 7 inches?      A. Yes.

Q. Both 20 fathoms long?

A. Yes, sir, about 20.

Q. Are those the lines which Mr. Kraatz described as being not as good as the line that was passed out?

A. We have no lines aboard as poor as the ones that were passed from the vessel.

Q. Did you hear Mr. Kraatz’s testimony?

A. Yes. We condemn lines before they get in that condition. [227]

Q. Were you on board the tug that day?

A. No.

Q. How long before this day had you seen these lines?      A. I couldn’t tell you that.

(Testimony of W. J. Gray.)

Q. How do you know what condition the lines were in?

A. Because it is the order to have lines aboard that—

Q. Because it is the order?      A. Yes.

Q. You don't know, of your own knowledge, whether there was a single line on board that tug that day, do you?

A. No, not of my own knowledge.

Q. And when you testified just now that Mr. Kraatz's testimony—and you did so testify in effect—was wrong, you were testifying to your general opinion about the situation, were you not?

A. My general knowledge.

Q. Your general opinion?

A. No, sir, my general knowledge.

Q. You had no knowledge, had you?

A. I know what is aboard those boats.

Q. Did you see what was aboard of them?

A. I cannot recollect just particularly now, this was a year ago.

Q. You don't know just what lines were on the "Fearless" that day, Captain, do you?

A. I think I do.

Q. And you say now there were two 7-inch lines on board the vessel that were better than the lines that were passed out?      A. Yes, two 7's and two 6's.

Q. And you saw them there?

A. I cannot tell that at this length of time.

Q. All you know about it is that you gave your orders on these matters, and that you have pretty

(Testimony of W. J. Gray.)

good men under you, and you think they obey your orders: Isn't that right?     A. That's right.

Q. And that is what you are basing your answer on?     A. Yes.

Q. And if one of your men happened to slip, or if one of the men under him happened to slip, that would let you out? [228]

A. But they cannot operate unless they have lines.

Q. Yes, they had four lines, and Mr. Kraatz described them in great detail, and said they were all bad; as a matter of fact your knowledge is based on the orders you give your men, and on the presumption that those orders are complied with?

A. Yes, sir.

Q. Upon the investigation you made at the time of this accident, you discovered that this line was cast off after the engine was started ahead, didn't you?     A. No, sir.

Q. I will ask you whether this is a correct statement in the answer which you verified:

“Said steamship stopped backing her engines, and said tug, as was usual and customary in similar cases, also stopped her engines and prepared to cast off said line; that the officer stationed on the poop deck of said steamship thereupon directed his crew to take in said line, and at least one-half of the line that was out was so hauled in by said crew, when said steamship, with her helm to starboard, started her engines ahead, whereupon said line was cast off from said tug.”     Is that correct.

A. I don't think so.



(Testimony of W. J. Gray.)

Q. Did you, on the 15th day of March, 1916, say to Mr. C. H. Williamson, in San Francisco, at your office, that the "Edith" was about 700 feet out from the end of the pier and that the tug master did not let go the tow-line until he saw that the propeller of the "Edith" was going ahead. Did you make that statement?

A. No, sir, I did not make that statement.

Q. Or anything to that effect? A. Yes, sir.

Q. What did you say?

A. I said that the vessel was over 700 feet out from the dock, and the master of the tug never attempted to cast that line off until the ship stopped backing, until he stopped his propeller, and about the time the line was ready to be cast off, at the time that this man Kraatz had the line in his [229] hand, she started her wheel ahead and dragged it away from him. That is what I told him.

Q. Did you hear the testimony here this afternoon that the line was cast off before the wheel was started ahead?

A. Well, I might have heard it, I am not sure.

Q. It is not correct, in your opinion?

Mr. CAMPBELL.—If your Honor please, that is immaterial, irrelevant and incompetent.

Mr. SUTRO.—I want to get the facts. I will withdraw the question if you object to it.

Q. The line was cast off before the wheel was started, you say?

A. Before it was started forward.

The COURT.—He was not there; evidently what-

(Testimony of W. J. Gray.)

ever information he has is open to us, we are trying to pry it out from people under oath, and we will be lucky if we get it.

Mr. SUTRO.—I think so, your Honor.

The COURT.—I don't mean that the men are falsifying, but they see things differently and recall them differently.

Mr. SUTRO.—I think it has been said that three witnesses will go through a room and not see the same things, and they will be perfectly honest.

The COURT.—No doubt about that.

Mr. SUTRO.—Q. Now, Captain, I don't think there is any question about this, but I want to be sure. What your tugboat captain intended to do was to tow this vessel out by the stern, get the line off in some proper way, have it hauled in in some proper way, and then either by the drifting of the vessel or the maneuvering of their wheels, get them in position so he could take a bow-line: Is that so?

Mr. CAMPBELL.—I object to that. He is asking this witness' idea as to what the captain's intention was; in other words, he [230] is asking this man to read the captain's mind.

The COURT.—That is true.

Mr. SUTRO.—Q. Didn't you give the captain his instructions that day?

A. No, sir. He was instructed to haul the vessel out on a stern line. That is all the instruction that was given to him in the office.

Q. All right, I will withdraw that other question if Mr. Campbell objects to it. You have described

(Testimony of W. J. Gray.)

a maneuver here, such as was attempted, in your direct examination, where a vessel is towed out by the stern, the stern line is dropped, the ship swings into a position where the tug gets the bow-line, and it takes the bow-line and goes on; is it not a fact that in endeavoring to perform that maneuver on that day the "Edith" would inevitably have to drift some distance, however slight?

A. Both drift together.

Q. Is it not a fact, Captain, that in performing that maneuver, if it was performed exactly as it should be in your opinion performed, is it not a fact that the "Edith" would inevitably have to drift some distance? A. Yes, sir.

Q. And the distance she would drift would depend upon wind and tide? A. Yes.

Q. Is it a fact, Captain, that seamen recognize the rule that when a vessel is in a port, particularly a strange port to the master, the tugboat captain is supposed to be familiar with the winds and the tides and the master of the vessel not necessarily so?

A. Yes; the tugboat man is familiar with the current and the wind.

Q. And he is supposed to have a particularly accurate knowledge of those, and he usually has?

A. He has got an accurate knowledge of them, particularly any of the old hands.

Q. Now, if the "Edith" had to drift in performing this maneuver because her propeller had to be topped, that involved the necessity [231] of the tug taking a line from her while she was drifting in

(Testimony of W. J. Gray.)

the opposite direction: Isn't that so?      A. No, sir.

Q. It is not?      A. No, sir.

Q. You say that in taking the "Great Northern" and the "Northern Pacific" out of the docks you furnish the line?

A. Taking them out, yes; putting them in they furnish it.

Q. I say, that you say that in taking the "Great Northern" and the "Northern Pacific" out of the dock you furnish the line?      A. Yes.

Q. Aren't there a great many cases where a vessel has no power and a tugboat service is rendered to the vessel where the tugboat is in charge and where the master of the tug stands by his tug, is on the tug?

A. Not if we know it.

Q. Not if you know it?

A. Not if we know it, sir.

Q. Then Captain Randall's practice in that regard, of sometimes going out on his tug when he is in charge of the tow, is not the customary practice?

A. It is not the custom to take a vessel away from the dock without there is either a boat alongside of her or she has her own power.

Q. Is it ever done?

A. I tried while I heard them testifying to that to think of one, but I couldn't think of one, and I would not allow them to do it. Frequently we use two tugs, one on a stern line and one alongside.

Q. Now, Captain, if the "Edith" had engaged for the tug's lines, or if she had had an understanding with you that in case she wanted them she was to

(Testimony of W. J. Gray.)

have them, would that 12-inch hawser have been passed up to the "Edith"? A. Yes, sir.

Redirect Examination.

Mr. CAMPBELL.—Q. Captain, when you said that you determined in your own office whether they were to assist or it was to be a flat towage, do you mean that that is determined by you, or [232] determined by arrangement that is made between the owner or master of the steamer to be towed?

A. It is an arrangement with the tug company and the agent or master of the ship that is going to be towed.

The COURT.—Q. It would depend upon the contract? A. Yes, sir.

The COURT.—We will take this up again tomorrow afternoon at two o'clock.

(Further hearing was thereupon continued to Wednesday, June 6, 1917, at 2 P. M.)

[Endorsed]: Filed Jun. 7, 1917. W: B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [233]



*In the United States District Court for the Southern Division of the Northern District of California, First Division.*

Before: Hon. MAURICE T. DOOLING, Judge.

No. 16,031. Vol. 2.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Etc.,

Respondent,

SHIPOWNERS & MERCHANTS' TUGBOAT  
COMPANY, a Corporation,

Claimant.

WEDNESDAY, JUNE 6, 1917.

Counsel Appearing:

For the Libelant: OSCAR SUTRO, Esq.

For the Claimant: IRA A. CAMPBELL, Esq.

**Testimony of C. Randall, for Claimant.**

C. RANDALL, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Are you superintendent of the Shipowners & Merchants' Tugboat Company?

A. Yes.

Q. Were you such in March, 1916? A. Yes.

Q. At the time of the "Edith" accident?

A. Yes.

Q. Do you hold a master's certificate? A. Yes.

Q. Did you ascertain from your records the weight

(Testimony of C. Randall.)

of wire that was used to make the pennant that is fastened to the towing hawser of the tug "Fearless" at that time? A. Yes.

Q. What did it weigh per foot?

A.  $3\frac{1}{2}$  pounds.

The COURT.—Q. Per foot? A. Yes.

Mr. CAMPBELL.—Q. What was the size of the wire?

A.  $1\frac{1}{2}$  inch.

Q. Who received the order and arranged for this towing service? [234] A. I did.

Q. From whom did you receive your communication?

A. Some people at Pier 46, the Luckenbach people, the Luckenbach Company, for the captain of the steamer "Edith."

Q. Do you know whether it was the captain in person who talked to you over the phone?

A. No, it was not the captain.

Q. What character of service was arranged for?

A. A tug to help him to Hunter's Point drydock.

Q. To help him to Hunter's Point drydock?

A. Yes.

Q. How long have you been superintendent of the Shipowners and Merchants' Tugboat Company?

A. Eleven years.

Q. I want to ask you the question as to whether or not in your judgment, captain—

Mr. SUTRO.—You are asking the captain as an expert I suppose?

(Testimony of C. Randall.)

Mr. CAMPBELL.—Yes, I am. He was not there at the time.

Q. Captain, if the “Edith” was lying on the southerly side of Pier 44 and the tug “Fearless” with a hawser of approximately 25 fathoms in length was fastened to the stern of the “Edith” and the “Edith” was with her own power and by the assistance of the tug pulled out into the stream so that she was a distance of say 700 feet off the end of Pier 44, and if at that time there was a strong south-east wind and an ebb tide be running—I ask you whether or not in your judgment it would have been possible for that steamer to have turned about in her course and headed for Hunter’s Point drydock by going ahead on a starboard helm with her engines working ahead and the tug pulling astern on a starboard helm so as to swing the “Edith’s” stern to starboard, the “Edith” at the time being in a light condition?

A. That would depend on the draught of the vessel a good deal—I understand the wind was southeast?

Q. The wind was southeast?

A. It would depend upon the trim [235] of the ship, that is, what her draught would be forward and aft.

Q. Assuming that the “Edith” was 340 feet long, about 40 feet in beam and was drawing approximately 12 feet aft and 8 feet forward?

A. You could not do it.

Q. Why not? What would prevent it?

A. The bow would blow off to the leeward too fast

(Testimony of C. Randall.)

for you to hold the stern down on account of the difference in the draught of the ends. If she had been as much by the bow as she was by the stern it could be done very readily.

Q. Captain, did you examine the ends or the eyes of the two hawsers on the "Edith" which parted, at the time that they were brought back to the Company's office by the "Fearless"? A. Yes.

Q. In what condition were the two lines?

A. Poor condition.

Q. Just describe to the Court what you mean by that.

A. One of them, the 6-inch rope was what I would say rotten, very poor; the 7-inch was a little better, but that was in very poor condition; I think it had been stowed away wet the way it appeared to me; it had a very sour smell and the threads were very brittle like, as though it might have been burned or steamed; sometimes ropes will get that way when you stow them away wet.

#### Cross-examination.

Mr. SUTRO.—Q. Are you related to W. M. Randall? A. Yes.

Q. What relative, if any? A. Brother.

Q. A brother? A. Yes.

Q. You have considerable interest in this controversy, haven't you? A. Why, yes.

Q. And the matter on which you have expressed your expert opinion here is one that affects your company considerably, doesn't it?

A. Well, we are interested.

(Testimony of C. Randall.)

Q. You understood that the hypothetical question that was put to you, the hypothetical case that was put to you was the case that is involved here, didn't you? A. Yes. [236]

Q. In which your company is the claimant of the vessel and you really are expressing an opinion in your own interest, are you not?

A. Well, I am giving my opinion by experience.

Q. Now, as I understood you captain, the reason that you did not think this turn could not be made in this hypothetical case in which you expressed your opinion was because the bow would blow off to the leeward? A. Yes.

Q. Suppose the wind had been blowing in the opposite direction or suppose there were no wind, would you then say that the maneuver could be done?

A. Without any wind it could be done, yes.

Q. Or without the movement of the tide—did that affect your opinion?

A. No. The wind in this particular case would have more to do with it than the tide.

Q. Now, to a person not familiar with the condition of the wind, of course that maneuver would seem a perfectly proper one, would it not?

A. Well, it is not the proper way to handle a ship.

Q. It could be done though?

A. It could be done—lots of things are done.

Q. You as a seafaring man do not expect the same knowledge of port tides and port winds on the part



(Testimony of C. Randall.)

of visiting captains that you do of your own tugboat captains?

A. No. We are more familiar with the local conditions.

Q. You are supposed to be and you are peculiarly familiar with local conditions? A. Yes.

Q. That is your business? A. Yes.

Q. To keep yourself informed about that?

A. Yes.

Q. And that applies to your tugboat captains?

A. Always.

Q. And that is really true of tugboat captains in every port, is it not? A. Well, it is here.

Q. So far as your knowledge goes pilots and tugboat captains are supposed to be particularly familiar with local conditions of [237] wind and tide?

A. Yes.

Q. Is that not so? A. Yes.

Q. More so than seafaring men who enter the port? A. Yes.

Q. You stated that you saw the two lines here, the ends of two lines; one was a 6-inch and the other a 7-inch?

A. I should say about 6 and about 7; I am not positive.

Q. One inch more or less you would not be positive about?

A. No; one was a little larger than the other.

Q. It might have been a 7 or 8?

A. No, I think they were 6 or 7.

Q. You would not say positively one of those lines

(Testimony of C. Randall.)

was not an 8-inch line, would you?

Mr. CAMPBELL.—We have the lines in Court.

A. No, I would not say it was not. My opinion is that it was a 6 and 7.

Mr. SUTRO.—Q. You said that one of them was rotten and one was in poor condition?

A. Poor condition, yes.

Q. Were you familiar with the lines that were on board the tug "Fearless" on this day? A. Yes.

Q. Did you see them on that day?

A. I see them about every day while the boat is in port.

Q. You saw them on that day?

A. I don't know that I did on that particular day.

Q. Can you tell me what lines were on that tug that day? A. Her regular equipment.

Q. Do you know of your own knowledge, or are you simply proceeding on what you believe was the practice of your company?

A. No; I know what lines they carry on board of the tugs, all of them; that is the working lines.

Q. There was a 12-inch hawser on that tug, was there not? A. Yes.

Q. Do you know that with the exception of the 12-inch hawser [238] every line on that tug was in worse condition than either of these two lines?

A. They were not.

Q. That is your opinion? A. I know it.

Q. You did not see them on that day, did you?

A. But I seen them from time to time.

Q. Just tell me what lines were on that tug?

(Testimony of C. Randall.)

A. The ones that were on her?

Q. Yes.

A. I could tell you several that were on her.

Q. What lines were on the tug?

A. They carry 7-inch hawsers, 7-inch rope.

Q. 7-inch rope? A. Yes.

Q. How many? A. Not less than four.

Q. Were there four on the "Fearless" on this day? A. I did not see them on that day.

Q. Were there aboard the "Fearless" that day?

A. I don't know that there were four.

Q. You don't know how many 7-inch hawsers were on the "Fearless" that day?

A. I did not see them.

Q. Do you know how many there were on the "Fearless" that day?

A. Not on that day, I don't know that there were four; there might have been five.

Q. There might have been five?

A. But her equipment is four.

Q. You testified here a few minutes ago that you knew what ropes were on the "Fearless" that day; and you have undertaken to compare their condition with the condition of these two lines. Now, I want to know from you what lines were on the "Fearless" on that day about which you are testifying?

A. Her regular equipment is four lines.

Q. That isn't an answer to my question, captain. If you know what lines were on the "Fearless" that day tell us what they were?

A. I did not count them, but I do know she has a

(Testimony of C. Randall.)

regular equipment of 7-inch ropes. [239]

Q. How many? A. Four.

Q. Were they on her that day?

A. I don't know.

Q. Do you know whether there were any on her on that day? A. Yes.

Q. How many are you sure there were there?

A. I would not say.

Q. What other ropes were on the "Fearless" that day? A. Besides which?

Q. Besides the four 7-inch hawsers?

A. 12-inch hawser.

Q. What other lines?

A. I don't know that there were any others.

Q. Were there any 6-inch lines on the "Fearless" that day?

A. I am not prepared to say; I don't know.

Q. What was the length of these 7-inch hawsers?

A. About 20 fathoms.

Q. Any more?

A. Well, there is a piece of wire goes on them, on the end, a short piece of wire to avoid chafing.

Q. How much of a piece of wire?

A. Probably 4 to 6 fathoms—maybe 5 fathoms.

Q. So that would make the total 25 fathoms, would it not?

A. Well hardly; there is a splice of course taken out of the rope and two splices in the wire.

Q. Was there a breast line on the "Fearless" that day?

A. We usually have—they really are all breast

(Testimony of C. Randall.)

lines, the four of them, used for breast line purposes.

Q. You don't know whether there was any 6-inch hawser on her on that day?

A. I could not say; if there was they were not for regular towing on that boat.

Q. But the 7-inch lines were there for the regular towing? A. When we are alongside of vessels.

Q. Are you willing to say there were at least four good towing hawsers on the "Fearless" on that day?

A. There is no doubt she had four, which is her regular equipment.

Q. If she did not have she should have had?

A. Yes. [240]

Q. If she did not have four good 7-inch towing lines on that day she should have, shouldn't she?

A. Yes.

Q. By saying, Captain, that she should have had that many I mean that she would not be properly equipped unless she did have them?

A. There is no law on that.

Q. But I mean your opinion?

A. That is my opinion.

### **Testimony of Emil A. Sandstrom, for Claimant.**

EMIL A. SANDSTROM, called for the claimant, sworn.

Mr. CAMPBELL.—Q. How old are you, captain?

A. 55.

Q. What is your business?

A. Seaman; seafaring man.



(Testimony of Emil A. Sandstrom.)

Q. What do you do? Are you a sailor before the mast  
A. No, master.

Q. Of what? A. Of tugboats.

Q. What tugboat are you captain of now?

A. The "Sea King."

Q. Owned by what company?

A. The Shipowners & Merchants' Tugboat Company.

Q. How long have you been in the towboat business here in San Francisco? A. Since 1888.

Q. Over what waters have you towed? Whereabouts have you towed with your tug?

A. Most everywhere, coastwise, around the bay and rivers; wherever work directs us.

Q. Do you ever tow coastwise? A. Yes.

Q. Whereabouts?

A. Well, anywhere from San Diego to Puget Sound.

Q. Were you the master of the tug "Fearless" at the time of the accident to the "Edith" by her running into Pier 32 in San Francisco harbor?

A. Yes.

Q. Where were you when you received orders to proceed to the "Edith"?

A. Down at the tugboat office, Green Street wharf.

Q. Whereabouts is the tugboat office with respect to the place where the tugs moor or tie up at the Green Street wharf? [241]

A. Well, the tugs tie up at the wharf, and they are always down at the end, the extreme end of the wharf.

(Testimony of Emil A. Sandstrom.)

Q. Which end, the inner end or outer end?

A. The outer end.

Q. What orders did you receive from your company?

A. To go up to assist the steamer "Edith" from 46 to Hunter's Point drydock.

Q. Did you go?      A. I did.

Q. About what time of day was it when you reached there?

A. That was about 3:30 or 3:40, somewhere around there.

Q. Where did you find the "Edith" first?

A. The "Edith" was tied up at the north side of 46.

Q. At the inner end or the outer end?

A. The inner end, right up to the bulkhead.

Q. What did you do with your tug when you got up to Pier 46?

A. Well, I got a line on the wharf and waited until the ship got ready.

Q. By the way, what is the length of the "Fearless"?      A. Of the ship?

Q. Of the "Fearless"?      A. About 100 feet.

Q. What is her beam?

A. 22-6; 22-7; I aint sure which.

Q. How much water does she draw?

A. About 13 feet.

Q. What horse-power has she?

A. She has between 500 and 600.

Q. I ask you to look at this photograph and tell me whether or not that is a picture of the "Fear-

(Testimony of Emil A. Sandstrom.)

less" as she was at that time, save that she is shown here with two masts and then only had one mast?

A. The only difference in the picture is, it is painted black and there she is white, and not having the mainmast nor this gaff.

Q. But otherwise it was the same?

A. But otherwise it is the same boat; there is another exception: the sliding-board was not there.

Q. For what kind of towing, Captain, is the tug "Fearless" used? [242] Over what waters do you use the "Fearless" for towing?

A. Well, she has been used accasionally along the coast.

Q. Outside? A. Outside, yes.

Q. In harbor work? A. Harbor work as well.

Q. Now, when you arrived at Pier 46 what did you see about the condition of the "Edith"?

A. She was tied up at the wharf; I didn't see anything unusual in her condition.

Q. What did you do with your tug?

A. Well, I tied up with a line at the wharf to wait until the "Edith" got ready.

Q. Did you have any words with or any communication with any of the officers of the "Edith" at that time?

A. I did. I asked the second mate to give me a line when she would be ready.

Q. Where was the second mate at that time?

A. On the poop.

Q. Did the "Edith" at that time have any mooring lines out astern to the dock?

(Testimony of Emil A. Sandstrom.)

A. Yes, she was moored at both ends.

Q. How did you receive a line from the "Edith"?

A. I asked the mate to give me one of his best lines that he had on the wharf; and I passed the heaving line to wharf and got the line from the wharf to my boat.

Q. How was your boat at that time—what was the position of your tug at that time?

A. The position of my tug was nearly across the slip.

Q. How was she held in that position?

A. With the line—she was held to the wharf with a line, but the wind and tide held her in that cross-wise position.

Q. By a headline from your tug to the wharf?

A. Yes.

Q. Who made fast the heaving line to the "Edith's" line on the dock?

A. The man that was there tending to the letting go of the lines.

Q. How did you then get that line aboard your tug?

A. We hauled it aboard with a heaving line. [243]

Q. What was the shape or condition of the end of the line that you received

A. It was apparently a good looking line.

Q. What I want to get at is, did it have an eye in the end of it? A. Yes.

Q. How did you make it fast on your tug?

A. I hung it over one side of the towing-bitt and through the center.

(Testimony of Emil A. Sandstrom.)

Q. Through the center?     A. Yes.

Q. You call the side of the towing-bitt the horn of the bitt?     A. Yes.

Q. When you received that line, what did they do with the line on the "Edith"?

A. They let go of the stern lines.

Q. What did you do with your tug?

A. I let go of my lines so as to be ready to pull when she would be ready.

Q. Then how did the stern of the "Edith" move?

A. The tide and wind had a tendency to slough the ship across the slip.

Q. Slough her across?

A. Move her away from the side of the wharf.

Q. What did you do then?

A. Well, I started ahead on my boat first to keep the ship in the position.

Q. What kind of a strain did you put on the line?

A. Ordinary strain.

Q. Did you jump on it or jerk on it?     A. No.

Q. Then what happened?

A. The line parted.

Q. Whereabouts did it part?

A. Just about the splice of the eye.

Q. Have you got the line with you here in court?

A. I have.

Q. What kind of a break was it?

A. It was not a fair break.

Q. What do you mean by a fair break?

A. A fair break is where a line breaks right across, but in this particular case some strands broke and



(Testimony of Emil A. Sandstrom.)

others held longer—they did not hold, but they held longer than the other ones. [244]

Q. Did you examine the part of the line that was left on the tug to observe its condition? A. I did.

Q. What was its condition?

A. I considered it in poor condition.

Q. What was there about it—what was the condition that led you to that opinion?

A. The line looked good but it appeared to be either overheated or overcome with acid or something to that effect, that damaged that line.

Q. How did that demonstrate itself to you? What was the evidence that led you to that conclusion?

A. The evidence was there because one strand was good, one strand held longer than the other; they did not all part at the same time.

Q. Was there anything in the fibre of the line that gave that indication? A. Yes, there was.

Q. What was it?

A. It can be picked to pieces with your fingers.

Q. Could you demonstrate that to us if we should bring the line in? A. How is that?

Q. Could you show that to us if we should bring the line into the courtroom? A. I could, yes.

Q. After that line was broken what did you do?

A. Well, I waited until the ship got alongside of the wharf again, that is 44.

Q. She drifted?

A. The tide and wind drifted her across the slip, and I got another line out.

(Testimony of Emil A. Sandstrom.)

Q. From what part of the "Edith" was the first line passed, on which side?

A. On the port side.

Q. The first line I am speaking of?

A. The first line.

Q. And the second line was passed on which side?

A. On the starboard side.

Q. What can you say as to whether or not the second line that was passed was a part of the first line?

A. It might have been; that I couldn't say.

Q. That you couldn't say?     A. No. [245]

Q. Did that line have an eye in it?

A. It had an eye in it.

Q. How did you make that fast with your tug as compared with the other?

A. The same as the first one, over one side of the towing-bitt and through the center.

Q. About how long would you say the first line was that was passed to you?

A. About 25 fathoms; it might have been a fathom less or more, I could not say.

Q. What was the length of the second line that was passed?     A. Apparently the same.

Q. Apparently the same?     A. Yes.

Q. After you had the second line passed what did you do?     A. Pulled the ship out.

Q. How did you do that?

A. Well, simply pulled her out of the slip, that is all.

Q. In which direction did you pull her?

A. Well, right out of the slip.

(Testimony of Emil A. Sandstrom.)

Q. Straight out into the bay? A. Yes.

Q. Did you receive any assistance from the steamer by her engines?

A. The steamer was backing at the same time.

Q. Now, you subsequently let go from the steamer's hawser, did you, afterwards?

A. I let go after the steamer stopped.

Q. Now, about how far off the end of Pier 44 were you at the time that the hawser was finally let go?

A. Well, in the neighborhood of 700 feet; it might have been a little less or it might have been a little more.

Q. What pier were you about opposite at the time that you let go? A. Well, just about opposite 44.

Q. Opposite 44? A. Yes.

Q. Now, you will explain the circumstances and conditions which attended your letting go of the line. Just explain fully to the Court just what took place?

A. Well, when the ship started backing [246], I sung out to the second mate, or which I thought to be the second mate—I don't know who he was, a man in uniform, to haul in the line, and him and two men that he had with him proceeded to haul in the line.

Q. Where *were* this officer in uniform that you called out to? A. On the poop of the ship.

Q. What did you say to him?

A. I asked him to haul in the line.

Q. Did you stop your tug at that time?

A. I stopped my tug.

Q. How many men actually worked on hauling in the line?

(Testimony of Emil A. Sandstrom.)

A. Three; two men and the second mate.

Q. What was being done with the end of the line that was on your tug while they were hauling it in?

A. Well, I held on to the end as long as I could.

Q. You say you did. Did you personally?

A. No, my men; my crew of course.

Q. What do you mean by saying they hung on as long as they could?

A. Well, I mean by that they did not throw it overboard; they held on to the line so that it could not foul the ship's propeller or get under the ship, as long as they could.

Q. Then what?

A. The ship went ahead on the propeller and on a starboard wheel and pulled the line away from us, after they had about half of it in, or a little more than half of it.

Q. At the time that the line was pulled away from you how close was the tug to the stern of the steamer?

A. Well, now, it might have been 8 or 10 fathoms from the stern of the ship.

Q. How much line was there left out at the time?

A. Well, I figured they had about half of it in or a little more than half of it in; there must have been 12 fathoms out—10 or 12 fathoms out—something like that.

Q. At that time?      A. Yes.

Q. Was the mate still on the poop at that time?

[247]

A. The mate was still with his men on the poop.

(Testimony of Emil A. Sandstrom.)

Q. At that time did you see the captain on the bridge?

A. Well, I could see him at times walking from side to side.

Q. What did you do after the line was finally let go from your tug?

A. After I let go of the line I turned my boat around and got under his bow.

Q. Did you see the line get in the wheel?

A. No, I did not.

Q. When in fact was the first time that you knew that the line had gotten into the wheel?

A. I didn't know the line was in the wheel until I got back to the tugboat office.

Q. That night?      A. That night.

Q. Which way did you turn your tug about to go under his bow?      A. On the starboard wheel.

Q. On the starboard wheel?

A. Around the bow.

Q. Along which side of the "Edith" did you pass?

A. Under the starboard bow—along the starboard side.

Q. As you passed along the starboard side did you say anything to the captain of the ship?

A. I asked the captain to give me a good line over the bow.

Q. Where was he at that time?

A. On the bridge.

Q. Did he make any response to you?

A. He made some response but I could not hear what it was.



(Testimony of Emil A. Sandstrom.)

Q. Where did you place your tug at the bow?

A. Right under the bow of the ship.

Q. How close to her stern?

A. That close that it left a mark on my guard, on the boat's guard.

Q. What do you mean—what kind of a mark?

A. Well, it done a little damage under the stem, lying there in the seaway.

Q. Why didn't you put the stem of the tug against the "Edith" and push her around?

A. No, I would have shoved a hole in her.

Q. Why?

A. The seaway—the stem would have cut the plates.

Q. What is the hull of the tug made of?

A. Steel. [248]

Q. And the "Edith" was a steel steamer?

A. Steel.

Q. Did they give you a line right away?

A. They did not give me a line right away, no; I did not get a line until we got away down by 34.

Q. Pier 34? A. Yes.

Q. How did you get from 44 down to 34?

A. Drifting by wind and tide.

Q. By tide and wind? A. Yes.

Q. When you got the line off 34, how close in to 34 were you? A. About 150 feet.

Q. About 150 feet? A. Yes.

Q. How does the tide run—how did the tide run along those piers?

A. It runs pretty much parallel with the wharves.

(Testimony of Emil A. Sandstrom.)

Q. To the ends?

A. To the ends of the wharves.

Q. How did the southeast wind act?

A. About the same, pretty near the same—it might differ a few degrees, but so little I couldn't detect it.

Q. What was it that carried you from a position 600 feet off of Pier 44 to 150 feet off to 34?

A. By the captain going ahead on his propeller, the ship.

Q. Was that all?

A. That is all I could imagine that would bring us that near to the wharf.

Q. Did the wind and tide have any effect?

A. The tide set her in a little but not that much.

Q. What did you do after you got at the bow?

A. Well, I waited there until I got a line.

Q. From where was that line passed to you?

A. It was made fast on the fore-castle-head.

Q. Where was it passed to you?

A. From the starboard bow?

Q. From the starboard bow?     A. Yes.

Q. How long a line did he give you?

A. Well, I had about 30 [249] fathoms; but after I started pulling it kept on running out a little while, so I had to stop my boat and let them make it fast.

Q. And after it was made fast?

A. After it was made fast it parted.

Q. Where did that part?

A. That parted near the eye.

(Testimony of Emil A. Sandstrom.)

Q. Did you examine the condition of that line?

A. That was a very poor line.

Q. Have you that here with you?

A. I have that here too.

Q. The deck-hand of your tug, Mr. Kraatz yesterday stated on the stand that an argument took place while you were at the bow of the "Edith" over the passing of the line. Was that correct or not?

A. No; there was no argument under the bow of the steamer.

Q. Was there at any time?

A. There were no words spoken at all till the captain told me to go ahead on the line.

Q. What did the captain say to you at that time?

A. He simply told me to pull.

Q. Was there at any time during this voyage any words between you and any officer on the "Edith" about the line?

A. There was in the slip, yes.

Q. What was that?

A. The second mate asked me why I didn't give him my line, my hawser.

Q. What were the words that he used?

A. Well, would I be permitted to answer that?

Q. Yes.

A. He said, "Why in hell don't you give me a hawser"?

Q. What did you say to him?

A. I told him, "You couldn't get my hawser up if you tried it."

Q. What did you mean by that?

(Testimony of Emil A. Sandstrom.)

A. It was too heavy for two men to haul up.

Q. Now, what is your judgment as to whether or not it would have been possible for the men on the fore-castle of the "Edith" to have gotten that hawser or that steel pennant up on to the [250] fore-castle-head so as to have made it fast for the "Edith" to use it?

A. It all depends on how many men they had there; I don't know how many men they had there; I couldn't see them.

Q. If they only had two men what is your judgment? A. No, two men couldn't do it.

Mr. SUTRO.—That contradicts the evidence in the case; the testimony is there were three men there.

Mr. CAMPBELL.—The mate and two men, I believe the evidence is.

Mr. SUTRO.—The evidence was there were three men on the deck handling the line.

Mr. CAMPBELL.—Including the mate or without him?

Mr. SUTRO.—Including the mate.

Mr. CAMPBELL.—Q. What is your judgment as to whether the mate and two men could have handled that steel pennant and got it up on the fore-castle-head? A. No, they could not.

Q. Now, just explain to the Court why.

A. Well, the weight of the steel pennant is too much and the friction is too much.

Q. How would they have to handle it; how would the friction come about? Just explain that.

(Testimony of Emil A. Sandstrom.)

A. Well, the friction comes about in this way. Now, we have a chock for that line on the bow of the ship; while the boat lays under there, you pass the line out of that and try to haul that wire over that chock it would naturally take quite the weight and perhaps a little more, quite the weight of that wire to haul it through that chock.

Q. How far would they have to haul it? Where would they put it?

A. It depends on where the bitt was on the fore-castle-head; I couldn't say where those bitts were; sometimes they might be 30 feet away from the chock. I have seen them farther than that away from the chock. [251]

Q. Captain, when the captain told you to go ahead on this line what did you do?

A. I went ahead on the line.

Q. Did the captain at any time ask you for your hawser? A. Not then.

Q. Did the captain of the "Edith" ask you for your hawser? A. No.

Q. Up to the time you got to Hunter's Point?

A. No, the captain never asked me for my hawser.

Q. Did the mate or anyone on the fore-castle-head ask you for your hawser? A. No.

Q. Before the line was passed to you did you give any suggestion or say anything to the master of the steamer as to what he should do with his vessel?

A. I asked the captain when I saw there was going to be trouble—I asked him to back on the ship.

Q. Did he back her?



(Testimony of Emil A. Sandstrom.)

A. No, he did not.

Q. After the line parted, after the second line or third line parted, the bow-line, what was done then?

A. Well, the captain backed a little before the line parted; he started backing; but they were too close to the wharf to avoid an accident.

Q. Did he stop backing or continue backing?

A. Well, he stopped; after he struck he stopped backing and the ship swung around the corner of the wharf.

Q. Around the corner of the wharf? A. Yes.

Q. At the time that the line parted where was the steamer with respect to the end of Pier 32?

A. Well, I couldn't really say; she might have been 20 feet off, or she might have been 30 feet off.

Q. Was she inside or outside of Pier 32?

A. She was in a direct line with the end of the wharves.

Q. A direct line with the end of the wharves?

A. Yes; she struck pretty nearly amidships, a little forward of amidships. [252]

Q. I will ask you to look at the diagram that has been put in as Exhibit "A" in Captain McDonald's deposition, and ask you whether or not the "Edith" was in that position at the time the line parted? Yes, that is about the position, only a little further out.

Q. Only a little further out?

A. A little further out than that.

Q. Toward the end of Pier 32?

A. Here is 32, isn't it?

Q. Yes.

(Testimony of Emil A. Sandstrom.)

A. Well, she was a little further out; just about here you see, on the corner.

Q. Now, after the "Edith" had swung around alongside of the end of Pier 32, what did she do?

A. She simply started up and went up to Hunter's Point.

Q. To Hunter's Point?      A. Yes.

Q. When you got up there did you assist in taking her in?

A. I assisted in taking her in; that is, I passed my hawser up and pulled him in so that he could get his line on the dock.

Q. Did you wait there until the "Edith" was actually in the drydock?

A. I waited there until she was in the slip. As soon as I thought I could do him no more good, after she was in the slip, I went home.

Q. Did you remain there while they did any pumping on the drydock?      A. No.

Q. You never saw the line in the wheel then?

A. No.

Q. I ask you, Captain, whether or not in your judgment you could have turned the "Edith" about and headed her for Hunter's Point drydock if at the time instead of letting go of the stern line you had continued to pull with your helm hard astarboard so as to swing her stern around to her starboard, and if the master had gone ahead on a hard astarboard helm at the same time—could you have pivoted or turned the "Edith" about under the conditions of the wind and tide existing there that afternoon?

(Testimony of Emil A. Sandstrom.)

A. Not with that wind.

Q. Why not? A. Too strong. [253]

Q. What effect would it have upon it to prevent it?

A. The ship was light, she had no cargo in, as far as I understand, and she drew very little water forward and the wind kept blowing her bow down.

Q. What way, Captain, in your judgment, was the proper way to turn the ship about?

A. Well, the proper way I would not say—the way I would have done if I had done it, I would have come around on the port wheel.

Q. What do you mean?

A. Kept on backing out until I got my stern up against the wind and tide.

Q. And then gone ahead on the port helm?

A. Then gone ahead on the port wheel.

Q. Where would you have come—down along the wharves?

A. No, naturally I would have started to pull out from the wharves right away.

Q. And swung which way?

A. Swung on the port helm.

Q. Now, were there any vessels anchored in the vicinity of Pier 32 or the piers to the northward of that?

A. There was at Pier 34, and below that there were about three vessels anchored there.

Q. Do you know the names of any one of them?

A. I know the "Santa Paula" was the foremost one.

Q. What is she?

(Testimony of Emil A. Sandstrom.)

A. She is an oil barge.

Q. Belonging to what company?

A. The Union Oil Company.

Q. Is there any usual or customary anchorage ground off these piers, at that place?

A. The forbidden anchorage extends 1300 feet off from the wharves.

Q. Where is the usual anchorage ground south of the ferry and the ferry lanes?

A. They generally keep a line from the end of Mission Street to Alameda Mole, in order to keep that clear, about that line. [254]

Q. You anchor to the southwards of that?

A. Yes.

Q. Now, how long had you been master of the "Fearless" at that time?

A. Well, I couldn't just say now but it is in the neighborhood of one and a half years.

Q. Do you know what equipment, what lines she had on board at that time? A. I do.

Q. Will you state to the court what they were and what their condition was?

A. The "Fearless" had a towing hawser, 12-inch towing hawser, with a wire pennant attached and four 7-inch lines 20 fathoms long, and 6 fathom pennant at the end of them, in good condition.

Q. Do you know what the condition was that day?

A. Good.

Q. Captain, if the master of the "Edith" had backed his steamer at the time that you suggested it to him what is your judgment as to whether or

(Testimony of Emil A. Sandstrom.)

not there would have been any collision with the wharf?

Mr. SUTRO.—I object to that as calling for the conclusion of the witness. I do not think that is a matter of expert testimony.

The COURT.—The objection will be overruled.

Mr. CAMPBELL.—Q. Read the question.

(Last question repeated by the Reporter.)

A. Well, my judgment is he would have cleared the wharf, he would not have touched it; very little backing would have done it.

Q. Was there anything, Captain, in the situation that you saw to have prevented the “Edith” from dropping her anchors? A. No.

Q. After you let go of the stern line?

A. None whatever; he was at liberty to let go his anchor at any time from the time he cleared the slip.

Q. Captain, if the master of the “Edith” knew that the line was in his wheel at the time of or shortly after letting go the stern line so that he could not use his engine, what in your judgment would good seamanship have required him to do under those conditions?

A. Well, that would depend upon my anchors, if it was me.

Q. What do you mean by it would depend on your anchors? A. Let go of the anchor.

Q. If that had been done, would there have been in your judgment any collision with that wharf?

A. No, none whatever.

Q. Did anyone aboard the vessel, aboard the



(Testimony of Emil A. Sandstrom.)

“Edith” ever suggest [255] to you that the line was in the wheel? A. No.

Cross-examination.

Mr. SUTRO.—Q. Captain, what was your crew on the day of this accident?

A. The number of men, you mean?

Q. Yes, and their position?

A. Chief engineer, two firemen, two deck-hands and a cook. [256]

Mr. CAMPBELL.—May I ask to interrupt there with one question:

Q. Captain, where were you standing on board of the tug at the time the hawser was let go?

A. Right about where that mast is.

Q. Where the after-mast is shown on this photograph? A. Yes.

Q. On top of this house?

A. Yes, on top of that house.

Q. Where were you at the time you were taking the head-line and pulling on the head-line?

A. I was standing about here, where I could ring the bells and watch my boat at the same time under the bow.

Q. That is opposite the pilot-house?

A. Opposite the pilot-house.

Q. Where do you steer that tug from?

A. Right from this pilot-house.

Q. Inside the pilot-house? A. Yes.

Q. Where does the engine-room come on that tug?

A. The engine-room comes right here.

Q. The last door?

(Testimony of Emil A. Sandstrom.)

A. The last door on that side.

Q. Are there any windows looking back toward the stern?

A. There are windows, one on each side of the after-end of the house.

Q. What would you say is the distance from the after-end of the house to the extreme end of the tug? A. 30 feet—from 30 to 35 feet.

Mr. CAMPBELL.—I will offer that picture in evidence, if your Honor please.

(The picture is marked Claimant's Exhibit "C.")

Mr. SUTRO.—Is that all?

Mr. CAMPBELL.—That is all.

Mr. SUTRO.—Q. You steer that tug from the pilot-house, you say? A. Yes.

Q. That tug is not equipped to steer from the stern? A. No.

Q. You have seen tugs equipped that way, haven't you?

A. I have, but very few of them. This one can be steered, in case [257] of emergency with relieving tackles from the quadrant aft—the quadrant on the rudder.

Q. Did you at any time on that day steer her from the stern? A. No, I never did.

Q. Now, you say that apart from yourself, or, rather, that your crew on that day was the chief engineer, two firemen, two deck-hands and one cook.

A. Correct.

Q. There is an assistant engineer, is there not, that belongs on the tug?

(Testimony of Emil A. Sandstrom.)

A. There is an assistant engineer, two assistants going outside, but not in the bay. There might have been at that particular time, but I wouldn't be sure, because we carry an extra crew for outside.

Q. How many tugs have you been on since you have had the "Fearless"?

A. Since I have had the "Fearless"?

Q. Yes. A. Only two since I have had her.

Q. What were they?

A. The "Sea Eagle" and "Sea King."

Q. You have discussed this case a good deal, I suppose, haven't you, with your superior officers and the company? A. How is that?

Q. You have discussed this case a good deal, I suppose, haven't you, with your superior officers?

A. Well, I have not been in contact with any of it, to speak of, since that.

Q. You undoubtedly reported this occurrence shortly after the accident?

A. I reported the occurrence at the office when I arrived there.

Q. Since that time, have you discussed it frequently? A. No.

Q. Have you discussed it at all?

A. We have talked about it, but nothing in particular.

Q. Haven't gone into detail about it? A. No.

Q. So that the recollection you are giving us here today is the recollection of events as they took place at the time of this accident?

A. Yes, to the best of my recollection. [258]

(Testimony of Emil A. Sandstrom.)

Q. You have not particularly refreshed your memory about it? A. No.

Q. Have not particularly refreshed your memory about the facts, have you? A. No.

Q. You are just giving us your best recollection?

A. That impressed me so hard when it happened, that it will stay there, stay there for 20 years.

Q. You are giving us your best recollection of it now? A. Correct.

Q. When did you go on the "Sea Eagle"?

A. The "Sea Eagle," in the beginning of November.

Q. 1916? A. Last year, yes.

Q. And up to that time had you remained on the "Fearless"? A. No.

Q. When did you leave the "Fearless"?

A. I was on the "Sea King" previous to that.

Q. When did you leave the "Fearless"?

A. That was somewhere in the spring of the year.

Q. The spring of 1916?

A. Yes—about the beginning of June, I should think.

Q. Now, the equipment of this tug varies from time to time, does it not? You carry different lines at different times?

A. No, we carry the same sized lines all the time.

Q. Then when you testified here today that the "Fearless" on this day had 47-inch lines on board—

A. Yes.

Q. (Continuing.) You were testifying from your knowledge of the general practice?

(Testimony of Emil A. Sandstrom.)

A. What I know that we had.

Q. You have not an independent recollection of each one of those lines have you?

A. No, I have not.

Q. You can't call up a picture, can you, of the four lines that were on that tug? [259]

A. I know they were good.

Q. You always aim to carry good lines?

A. We are bound to carry good lines because poor lines won't hold.

Q. You always aim to carry good ones? A. Yes.

Q. But you do not have any independent recollection now?

A. I have an independent recollection of those four lines, because we were doing bay work, and it was just after getting it aboard for bay work.

Q. Did you have any 6-inch lines aboard?

A. One.

Q. Where was that? A. Forward.

Q. Where were these 47-inch lines kept?

A. Two forward and two aft.

Q. Were any of them below?

A. We had a new one down below.

Q. Was that one of the four?

A. No, that is outside of the four; that is extra.

Q. In addition to the four?

A. Yes; but we had those four on deck.

Q. And the length of those lines, you say, was 20 fathoms?

A. The length of the lines was 20 fathoms, and the wire is about 6.



(Testimony of Emil A. Sandstrom.)

Q. Making 26 fathoms altogether?

A. About that, yes.

Q. Were they all the same size?

A. All the same size.

Q. Was the condition of all of them the same?

A. As near as I remember, yes.

Q. All about the same condition?

A. All about the same condition.

Q. All just about new?

A. Well, no, not exactly new. We had two new lines that had not been used half a dozen times, but the other two had been used for possibly a month or so.

Q. These lines were not heavy enough for towing purposes? A. No, never used for towing.

Q. Never used for towing? A. No. [260]

Q. What did you use them for.

A. For tying up the boat alongside the dock.

Q. So that it is your opinion that these lines could not be used for towing purposes?

A. They could, but you would have to bend two together to do it.

Q. Now, Captain, what was the first line that was passed to you from the "Edith"; was it a port line or a starboard line? A. From the port side.

Q. The first one. You are clear about that?

A. I am clear about that, yes.

Q. What was the second line that was passed to you? A. That was from the starboard side.

Q. Are you equally clear about that?

A. I am equally clear about that.

(Testimony of Emil A. Sandstrom.)

Q. I ask you that because there has been some divergence of opinion here as to whether or not they were port or starboard.

A. Well, different men may not recollect all these things, but—

Q. (Intg.) You are positive?

A. I was in command, and know where they came from.

Q. You are positive that the first was a port line and the second a starboard line?

A. I am positive of that.

Q. What instructions did you get, if any, from the captain of the "Edith"?

A. I did not get any instructions from the captain of the "Edith" except to go ahead.

Q. Did you consult with him before you went out of the slip?     A. No.

Q. Did you have a talk with anybody at the office as to what should be done?

A. Captain Randall, at the office, told me what to do.

Q. What did he tell you to do?

A. He told me to go up there and assist the ship to the drydock.

Q. Did he say anything else?

A. Nothing else. [261]

Q. When you got up to the "Edith," did you have any consultation with the captain?     A. No.

Q. You waited until he got ready and then you—

A. (Intg.) Waited until he got ready and told me to go ahead.

(Testimony of Emil A. Sandstrom.)

Q. Did you consider this a towage contract, or what you call an assist?

A. They call it an assist.

Q. In an assist, you take the orders of the master of the vessel?

A. Take the orders from the master.

Q. You make the lines fast that he tells you?

A. We generally arrange it, making fast the line ourselves.

Q. You do not wait for his orders about that?

A. When I had enough I told him to make fast.

Q. Did you drop the line when he told you to?

A. In this particular case he did not tell me to.

Q. Now, I am talking about an assist. As I understand it, there are two kinds of towage arrangements; one is where you have a straight tow a towage contract a towage duty, and the other where you have what they call an assist: Isn't that correct?

A. Correct.

Q. You distinguish between those two cases?

A. Yes, I do.

Q. And they are generally distinguished, aren't they? They are generally recognized as two kinds of service? A. Yes.

Q. One is called towage and the other is called an assist?

A. An assist; that is also a tow, to assist.

Q. As a matter of fact, is there any difference between the two kinds of service?

A. Well, there is.

Q. In the one case you take your orders—in one

(Testimony of Emil A. Sandstrom.)

case you are in charge and the other you are not?

A. Correct.

Q. Is that the difference?

A. That is the difference.

Q. Now, in those cases in which you are in charge, the thing is done the way you direct? A. Yes.

Q. And in those cases in which you are not in charge you get [262] orders as to how it should be done: Is that correct? A. Yes.

Q. Is that correct? A. Correct.

Q. So that in the case of an assist, you would be getting the orders of the captain, would you?

A. I would be getting the orders from the captain, yes.

Q. What was your purpose in taking this line from the starboard quarter instead of from the port quarter, the second line?

A. Well, because I was lying alongside the wharf, the same as the ship, and I possibly saved a minute or two by getting the line out from the starboard side instead of dragging it over from the port side.

Q. It would also help you hold the stern up against the tide?

A. Also help to keep the ship away from the wharf.

Q. As a matter of fact, she scraped along the wharf, didn't she, a little, in coming out?

A. She pressed along the wharf all the distance out—the tide and wind kept her in.

Q. The tide was pressing her in? A. Yes.

Q. As she was coming out, you were holding her stern up against the wind and tide with this star-

(Testimony of Emil A. Sandstrom.)

board line?     A. Correct.

Q. And the tide was sort of pressing her against the dock, and she scraped along the dock a little bit?

A. She might have scraped a little, yes, bound to.

Q. Didn't the captain, as a matter of fact, stop his engine so as to slow her stern way?

A. I couldn't say that he did; I don't remember.

Q. Don't you remember that she was scraping along the dock and that while you were holding her stern up—I am talking before she got clear.

A. Before she got clear, yes.

Q. You held her stern up, he stopped his engines and slowed the sternway?

A. No, I am in doubt about that; I don't think he did.

Q. You are not positive?

A. I am not positive, no. [263]

Q. She came out with a pretty good sternway, didn't she?     A. No, not very big.

Q. Now, you can see that diagram from where you are sitting, can't you, Captain?

A. Yes, I can see it.

Q. Is that lower position there of the larger model and the smaller one about the position of the "Edith" and the tug when you let go of that line?

A. The first line or the second line?

Q. The second line.     A. No.

Q. Let me get clear with you about one thing. The first line really has nothing to do with this case, has it, so far as any damage to the "Edith" is concerned?

A. No.



(Testimony of Emil A. Sandstrom.)

Q. After that line parted she merely drifted across the slip? A. Correct.

Q. And then you got the second line? A. Yes.

Q. And it was after that, really that the incidents occurred which led up to the accident? A. Yes.

Q. The first line, the parting of it, really had nothing to do with it? A. No.

Q. What is incorrect about that position as you see it there?

A. Well, my tug was not in that position.

Q. How was it placed, Captain? How was it headed, I mean? I will turn it. You tell me which way you want it turned.

Mr. CAMPBELL.—Let him place it.

Mr. SUTRO.—Suppose you place it, Captain.

A. This is the position when the captain stopped; but when we let go of the line I was more under the stern here.

Q. Were you more to the port of the stern, or were you dead under the stern?

A. No, a little more to port; you see, the wind kept blowing the ship down.

Q. Now, the position that you have shown us there is about the position that he was in when his engine stopped. A. That is about it, yes. [264]

Q. The tug was pretty well astern of the "Edith," was it not?

A. Pretty well astern, yes, a little more on the port quarter.

Q. Now, Captain, just assume for a minute—I am not asking you to accept this as a supposititious case,

(Testimony of Emil A. Sandstrom.)

but assume that he was going to turn his bow to port by starboarding his helm, if the tug was going to pull his stern around, it could do it there as well as anywhere else, couldn't it?

A. No, not with that wind and tide.

Q. I say, eliminating the wind and tide, and assuming you were going to do it that way at all, you could do it as well in that position as any other, couldn't you? A. Yes, providing there was no wind.

Q. Providing there was no wind and tide. So that if the master was going to turn the ship by turning her bow to port—which he would do by starboarding his helm, wouldn't he? A. Yes.

Q. If he was going to turn his bow to port, he would starboard his helm? A. Correct.

Q. And if it could be done at all with that tide and wind, or if there was no wind or tide and the tug was in a position where it could pull the "Edith" around either way—of course, if your tug was off here to port you could not do it?

A. No, but I was not off to port.

Q. You were right here?

A. Until after the line was slacked up.

Q. At the time the engine stopped, however, you were in a position where you could have pulled the stern around if the wind and tide had permitted it?

A. Yes.

Q. You did not get any instructions from the master to let go? A. No.

Q. You used your own judgment?

A. I used my own judgment; when he stopped his

(Testimony of Emil A. Sandstrom.)

engine, I thought it was time to let go. [265]

Q. You did not let go right away; you took the line off the bitt?

A. Took the line off the bitt and told him to haul in.

Q. You had one of your men holding the line?

A. Yes, two of them.

Q. But, of course, holding the line was about the same as letting go, was it not? At least, having a man holding it? A. So as to be ready to let go.

Q. A man could not hold that line against very much pressure, could he? A. No.

Q. Was there not quite a bight in that line?

A. No, not a great deal.

Q. Was there any bight in it at all?

A. Very little line out; it touched the water, but that is about all.

The COURT.—What is bothering me is—in hauling in that line it is not quite clear to me how the men on the “Edith” could haul in the line and still the deck-hand on the “Fearless” could retain hold of it.

A. The two ships are coming together gradually.

Q. What was causing them to come together?

A. I stopped my boat.

Q. He had stopped his, too?

A. He stopped his first, but the ship carried a little sternway.

Q. She still had sternway?

A. She still had a little sternway on.

Mr. SUTRO.—Q. Captain, wasn't her stern

(Testimony of Emil A. Sandstrom.)

swinging down with the tide toward the position that we see on the chart there?

A. No, no; that second position is wrong.

Q. That second position is supposed to show the position just after you got that bow-line?

A. After I got the bow-line?

Q. Yes. A. But that ain't anywhere near it.

Q. Will you come and fix that for us the way it should be? This is just after you got the bow-line.

A. You mean before I started to pull?

Q. Yes, as you started to pull. You started to pull as soon as you got the bow-line?

A. Here is where we were when I started to [266] pull; when I got the line I laid here.

Q. Put it the way you were when you started to pull, Captain. A. When I started to pull.

Q. Is that about correct?

A. That is about correct.

Q. When you pinned that model there just now, did you have in mind how close you were putting it to Pier 34? Is that where you want it?

A. About 150 feet from that wharf.

Q. About 150 feet from 34. Do you think the "Edith" could have dropped her anchors in that position with safety? A. Not there.

Q. So that after the line parted she could not have dropped her anchor without damaging herself?

A. No, she was too close, there.

Q. She would have swung right onto the pier?

A. She would have touched the wharves, yes.

Q. Now, I want to ask you again, after the

(Testimony of Emil A. Sandstrom.)

“Edith’s” engines stopped when you came out from Pier 44, didn’t she commence to carry down with the tide and wind and didn’t her stern pull with the tide and wind toward the piers? In other words, didn’t she start to turn?

A. She laid pretty near broadside to the wind.

Q. Didn’t her stern go down faster than her bow?

A. It might have been a little bit faster, yes, a little faster.

Q. Now, you were coming down with the wind and tide, too, weren’t you? A. Yes, the same.

Q. And your stern was swinging down with the tide and wind? A. No.

Q. Then the stern of the “Edith” was swinging away from your stern, was it not? A. Gradually.

Q. It started to swing just as soon as she stopped her engines, didn’t it?

A. Not exactly at the minute.

Q. But within a few minutes?

A. Very shortly afterwards.

Q. Wasn’t there a very strong wind and tide running there? [267]

A. The tide was not very strong; I have seen lots of stronger tides, but there was considerable wind.

Q. Well, we have got some figures here which show that the tide was low at six o’clock, or 6:02, or 6:08, and it was high water at about 12; so at 4 o’clock that would be about three-quarter ebb tide, would it not?

A. Yes.

Q. How fast do you think that tide was running?

A. In the neighborhood of 3 miles an hour.



(Testimony of Emil A. Sandstrom.)

Q. So that you had a 3-mile tide and the wind that day was 18 miles an hour, blowing southeast; that would tend to make that vessel drift pretty fast, wouldn't it?

A. Yes, she would drift pretty fast, being a light ship.

Q. In the meantime, as I understand you, the lines had been taken off your bitts on the "Fearless" and they were hauling them in on the "Edith"?

A. They were hauling them in on the "Edith."

Q. Now, if that third line had held, if that had been a good line, a sound line, you could have held the "Edith," couldn't you?

A. I could have swung her, but she would have still struck the dock.

Q. You could have held her?

A. I could have saved the blow.

Q. You could have saved the blow?      A. Yes.

Q. What size line was that?      A. 6-inch line.

Q. 6-inch?      A. Very poor line, apparently.

Q. Very poor line?

A. Yes; too poor for a tugboat to pull on.

Q. It was poorer than anything else you had on board?      A. Yes.

Q. And the man that handled your lines on board was mistaken if he said that it was a better line than anything you had on board?      A. A better line?

Q. Yes.

The COURT.—Except the 12-inch line.

Mr. SUTRO.—Except the 12-inch line.

A. No.

(Testimony of Emil A. Sandstrom.)

Q. It was not?     A. No. [268]

Q. Did you have any line on board the "Fearless" that was as bad as this 6-inch line—did you have any line on board the "Fearless" that was as bad as this 7-inch line?

A. None of the 7-inch lines, but the 6-inch line might have been as bad.

Q. The 6-inch line might have been as bad?

A. Yes.

Q. None of the 7-inch lines were as bad?

A. No.

Q. Now, if that had been a good line, if this 7-inch line had been a good line—

A. (Intg.) That was 6-inch.

Q. 6-inch line; excuse me; if this 6-inch line that you got from the "Edith" had been a fairly sound line, or a good line, you could have practically saved this damage, couldn't you?

A. I could have saved some damage, saved the blow, yes, but still she would have touched the wharf; she was then too close to the wharf.

Q. How many feet of line did you have out when the "Edith" stopped her engines and before any line was hauled in?

A. Before any of it was hauled in, I had about 25 fathoms out.

Q. How long were these good 7-inch lines of yours?     A. 20 fathoms.

Q. 20 fathoms, with a 6-fathom pennant?

A. 6-fathom wire on.

Q. With a 6-fathom wire?     A. Yes.

(Testimony of Emil A. Sandstrom.)

Q. Why couldn't you have passed the "Edith" one of your good 7-inch lines with the 6-fathom wire when you were under the bow here?

A. I didn't see any men while I was waiting under the bow there.

Q. You didn't see what?

A. I didn't see any men there.

Q. Did you hear the master of the "Edith" say "This is a bum tug, it has no lines"—I mean the mate of the "Edith"? A. No, I did not.

Q. Did you hear anything of that kind?

A. No, not there; only what transpired in the slip.

Q. I am talking about the time when you were right out in the stream. A. No. [269]

Q. You say you did not hear any argument there about furnishing a line? A. No.

Q. Do you know Mr. Kraatz—do you remember him? A. Yes.

Q. He was one of your deck-hands on that day?

A. He was a deck-hand at the time.

Q. As a matter of fact, he took the line off the bits, didn't he? A. He did, yes.

Q. He was the one that held it?

A. He was the man that was holding onto it.

Q. And he says that he had to let go because the weight got too much for him.

A. It would naturally do that, the ship pulled away from him.

Q. He said he had to let go before the "Edith's" engines started, because the weight was too much for him? A. Not before it started.

(Testimony of Emil A. Sandstrom.)

Q. Then you say that is not correct?

A. That is not correct.

Q. And that when he says he let the line go before the wheel started he is mistaken?

A. He is mistaken, yes.

Q. You are sure of that?      A. I am sure of that.

Q. Were you standing next to him when he let the line go?      A. Sir?

Q. Were you standing next to him when he let the line go?      A. I was standing on top of the house.

Q. Were you standing where you could see Kraatz?      A. Yes.

Q. Did you see him?      A. Yes.

Q. Were you looking at him when he let the line go?      A. Yes.

Q. Did you see John Taylor there?

A. John Taylor?

Q. Yes. Do you know John Taylor?

A. He might have been a fireman.

Q. Do you think he was?

A. Most likely he was.

Q. Do you know that he was?

A. No, I don't remember the name.

Q. Do you remember the man?

A. No, I do not. [270]

Q. You remember the four lines that you had aboard, but you do not remember the crew that you had on that day?

A. I remember the crew I had, but I don't remember the names.

Q. Do you remember the man?

(Testimony of Emil A. Sandstrom.)

Mr. CAMPBELL.—He might not remember the name of the fireman.

Mr. SUTRO.—Do you remember the fireman?

A. Yes.

Q. Were you standing where you could see him?

A. I know we had two firemen.

Q. Were you standing where you could see him?

A. Yes.

Q. Was he standing right by Kraatz when the line went over?

A. I could not say he was just by him, but he was on the stern of the boat.

Q. Was he mistaken if he said that after the line went over they started the wheel of the "Edith"?

A. They started the wheel before the line went over.

Q. Then he was mistaken if he said they started the wheel after the line went over?

A. They started it again after it was stopped—

Q. (Intg.) Mr. Taylor said that working the ship did not pull the line out of the deck-hand's hands. Was he mistaken about that?

Mr. CAMPBELL.—We object to that as an improper line of cross-examination.

The COURT.—He is giving his version of it.

Mr. SUTRO.—I thought it only proper to call his attention to it. If it is not proper I will desist.

Mr. CAMPBELL.—It won't change his testimony,

Mr. SUTRO.—I don't know; it might; it might refresh his recollection considerably.

A. No, I don't remember the name of the fireman.



(Testimony of Emil A. Sandstrom.)

Q. Are you sure now that the "Edith's" engines were started before this line went over the side of the tug? A. Yes, I am sure. [271]

Q. You are willing to say that positively?

A. I am willing to swear on that.

Q. Were you standing where you could hear the mate ask for the 12-inch hawser?

A. Yes; we were in the slip then.

Q. No; that is as you recollect it. You did not hear the mate ask for the 12-inch hawser when you were somewhere near this position? A. No.

Q. Just before you got here? A. No.

Q. You did not hear anyone on your tug refuse to pass that hawser? A. No.

Q. You personally did not refuse to pass it?

A. I did not refuse to pass it because I was not asked for it there.

Q. I am asking only about the time before you got into this position here.

A. In fact, I think if they had asked me for the hawser in that position I would have been compelled to give it to them.

Q. You did not hear the mate say, "That is a bum tugboat, it has no lines"?

A. No, I did not hear that.

Q. Or anything of that kind?

A. Not out there.

Q. I am talking about out here, Captain.

A. No.

Q. I am talking about some position, in between the position opposite 44 and 34. A. No.

(Testimony of Emil A. Sandstrom.)

Q. That is all I am talking about. A. No.

Q. You heard no discussion of any kind there?

A. No.

Q. You say now positively that you were not asked for that hawser while you were out there in the stream? A. No, I was not, positively.

Q. And you say that the reason you did not pass up one of your own 7-inch lines was that you did not see any men on the forecastle-deck?

A. That is not the reason; because I was not asked for any of those 7-inch lines. [272]

Q. The reason you did not pass up a 7-inch line is because there were—

A. (Intg.) They did not ask me for it.

Q. They did not ask you for it?

A. They did not ask me for it.

Q. It is alleged in the answer here that the first officer of the steamship "Edith" asked the tug to pass a large 12-inch hawser. Do you know of whom that was asked?

A. No, I don't know anything about that.

Q. Of course, your 7-inch lines, particularly those which you say were in good condition, would have held the "Edith" and prevented this damage if you had passed on—if they had asked you for it and you had passed one to them: Isn't that so?

A. These 7-inch lines are too short to hand a ship under the bow; there would have been possibly 3 or 4 fathoms consumed in getting it passed and another 3 or 4 fathoms in getting it fast on the towing bitts, and the tugboat would have no line to work on; I

(Testimony of Emil A. Sandstrom.)

would have been tied up right under the bow; I would have been helpless.

Q. In an emergency, a 26-fathom line would have been used to hold the "Edith" there, would it not—could have been used, if you had been asked for it?

A. Well, it could have been used, but whether it would have had any effect upon it I don't know.

Q. You were right under her bow?

A. I was right under her bow.

Q. When you were out from Pier 44 and the line was out at full length, there was only 25 fathoms between you, was there not?

A. About that; but that is between the ships.

Q. That is not allowing for—

A. (Intg.) Not allowing anything for making fast.

Q. Not allowing anything for making fast, and it is not allowing anything for wrapping around the bits? A. No.

Q. But when you were out here opposite Pier 44 with the full length line, the length of line that you had was the amount that you [273] called for, was it not?

A. Well, I could have had more if I wanted.

Q. You did not want any more?

A. I did not want any more; I told them to make fast.

Q. You felt that was plenty of line?

A. That was the ordinary length, you know.

Q. 25 fathoms? A. About that, 25 fathoms.

Q. You were not getting right up to an emergency,

(Testimony of Emil A. Sandstrom.)

where you could do with the least possible amount of line; you had plenty of line?

A. I had what I thought would be enough.

Q. You had what you thought was enough. In other words, 25 fathoms from stern to stern, in your opinion, was a safe and proper amount of line to have? A. Yes, for that kind of work.

Q. Captain, from where you stood could you see the propeller of the "Edith"? A. Yes.

Q. It was partly out of the water, was it not?

A. Partly.

Q. She was light? A. Enough to be seen, yes.

Q. And you could observe whether it was turning or not turning? A. I could, readily.

Q. As a seaman, you would not approve of the starting of an engine while there was a 20 or 25-fathom line astern, would you, if there was such a condition? A. I do not understand you.

Q. You would not approve starting an engine if there was a 20 or 25-fathom line over the stern of the ship hanging in the water?

A. In what direction do you mean? Either direction?

Q. Yes.

A. Well, if the line was tight, it would not make any difference.

Q. If it was hanging in the water?

A. No, I would not approve of it.

Q. As a matter of fact, every seaman always has in mind keeping his wheel clear of a line that has been cast off, hasn't he? [274] A. Correct.

(Testimony of Emil A. Sandstrom.)

Q. And always aims so to operate that his wheel won't become foul when a line is cast off?

A. Correct.

Q. If, then, there is danger of the line fouling, he stops his engine, does he not until it is in?

A. Yes.

Q. That is good seamanship?

A. That is seamanship yes.

Q. Did you happen to notice whether this was a right-hand or left-hand propeller?

A. Right-hand propeller.

Q. And it was a single screw?

A. Single screw; I could only see one of them.

Q. Now, the line, you say, was a starboard line?

A. Yes.

Q. You are sure of that now?

A. I am sure of that.

Q. And if this were cast off, it would naturally hang under the counter of the ship, would it not?

A. Hang across the rudder of the ship.

Q. With a right-hand screw turning to the right, if the line were hanging in that position and the screw turning, it would be pretty apt to foul, would it not?

A. If he didn't back it would not foul, but if he backed it is apt to catch on either side if it hangs in the water.

Q. As a matter of fact, a line coming from the starboard, the screw turning to the right, in the direction which the line was hanging, the line hanging across the counter, do you call it, of the ship, would



(Testimony of Emil A. Sandstrom.)

be pretty sure to catch in the propeller, wouldn't it?

A. No, not necessarily.

Q. Very apt to?

A. Apt to if there was lots of line and no motion of the ship; but the ship dragging the line would naturally keep it clear.

Q. Suppose at the same time you not only had the line cast off of the starboard and a right-hand screw turning to the right, but you also had the ship drifting to the right, to the starboard, [275] wouldn't that be more apt to foul the line?

A. No because the line would be trailing to the windward of the ship. The turning of the propeller to the right would not have any tendency to catch the line any more than if it was turning the other way.

Q. Would not the turning of a propeller to the right have a tendency to suck in what was on the starboard side and throw out what was on the port?

A. If he was backing.

Q. If he was backing?

A. The suction of the water will pull the line in there.

Q. You did not have any line below deck, I believe you said, except one 6-inch line or one new 7-inch line? A. One new 7-inch line.

Q. Where were your heaving lines? Were they below deck? A. No; on deck.

Q. Were they fastened to these 7-inch lines?

A. No.

Q. Did you have any 7-inch lines with a heaving

(Testimony of Emil A. Sandstrom.)

line fastened to them?     A. No.

Q. Was this 12-inch hawser a suitable line, in your opinion, for the performance of this maneuver?

A. Well, it could have been used; it would take a longer time to handle it.

Q. But was it of a character suitable for the purpose of performing this maneuver?

A. We seldom use it; it could be used.

Q. It is not the proper line for that maneuver?

A. Not the proper line for that work.

Q. When you left Pier 44 what line did you have that in your opinion was a suitable line for performing this turning maneuver, if you had any?

A. Well, the line I was pulling the ship out with from Pier 44.

Q. What line did you have on your tug?

A. The hawser.

Q. 12-inch hawser?     A. Yes.

Q. That was a suitable line for that job?

A. That is a suitable line.     [276]

Q. For that job?

A. Well, it is one that could have been used—not suitable, but could have been used.

Q. Did you have a suitable line for that job on your ship?

A. That is all the suitable line we require, a rope to pull on, that would hold to pull on.

Q. When you dropped this stern line here, did you advise the captain that you were going to go around his bow and pick up a bow-line from him?

A. No; I asked the captain, when I went along

(Testimony of Emil A. Sandstrom.)

his side, there, to give me a good bow-line.

Q. But that was after you got down toward Pier 36?

A. No, right away after I let go of the line.

Q. As soon as you let go of the line? A. Yes.

Q. Did you call out to the captain from where you were standing?

A. I ported my wheel and went around the ship, and as I went past the bridge I asked him to give me a good line.

Q. Did you pass the ship and come around again?

A. No, I went under the bow and stayed there.

Q. Will you show us where you first got under the bow of the ship, because this is the first time we have heard of this.

A. Can I move this?

Q. Yes. Just draw it, if you do not mind, Captain, where you were when you first got under the bow of the ship.

A. When I first got under the bow of the ship?

Q. Yes, where you first were *then* you asked him for a line.

A. I asked him for a line when I went by here. The ship was lying here then, when I went by her.

Q. That is when you first asked him for a line?

A. I came by here, you see.

Q. That is when you first asked him for a line?

A. When I first asked him for a line. [277]

Q. Where were you when you got the line?

A. Here is where I laid when I got the line.

Q. You are showing your first position about op-

(Testimony of Emil A. Sandstrom.)

posite Pier 42—about between 42 and 44. Is that where you want it?

A. That is about the position of the ship when I asked him for the line.

Q. When you first asked for the line?

A. Yes.

Q. When you first got the line you were opposite Pier 44?

A. There. By this time we were both drifting together.

Q. Toward Pier 44? A. That is correct.

Mr. SUTRO.—If your Honor will permit me to state this for the record, the position that the captain shows when he first asked for the line is with the “Edith” off the center between Piers 42 and 44, with the tug on the starboard side of the “Edith.”

The WITNESS.—Correct.

Mr. SUTRO.—And about amidships.

The WITNESS.—Correct.

Mr. SUTRO.—And the “Edith” with her helm pointed in the direction of Pier 44.

The COURT.—Her stem?

Mr. SUTRO.—Her stem in the direction of Pier 44.

The WITNESS.—Correct.

Mr. CAMPBELL.—You said the tug was to the starboard of the “Edith.”

Mr. SUTRO.—Yes, I think he meant that. This is the stern here, isn't it, Captain?

A. Yes, supposed to be.

Q. You would be to the starboard side?

(Testimony of Emil A. Sandstrom.)

A. Starboard side.

Q. Just about amidships.

The COURT.—Very shortly after that you laid alongside of the bow of the “Edith”?

A. As soon as I got under the bow I laid there all the time while he was drifting. [278]

Q. You drifted together from that position to where you say you got the line?

A. To where I got the line.

Q. How long did it take you to go that distance?

A. It was a long time, I imagined—possibly 8 minutes—6 or 7 minutes, somewhere around there.

Q. How long ought it to take two men to haul in that stern-line that you cast off, 25 fathoms?

A. It should not take very long.

Q. Roughly, how long?

A. In about 5 minutes.

Q. Why did you cast off there 700 feet away from the wharf?

A. Well, we cast off because I intended to come under the bow of the ship and get a bow-line and pull her around.

Q. Did you have room enough for that?

A. I had room enough; if I had got the line I would have had room enough.

Q. You made no investigation or inquiry to find out whether there was a line you could get?

A. I never went aboard the ship; I didn't know what they had there.

Q. You undertook that maneuver without finding out what they had aboard ship?



(Testimony of Emil A. Sandstrom.)

A. I took the captain's word for that.

Q. What did he tell you?

A. He told me to pull the ship out of the wharf, from the wharf.

Q. You didn't know what you were going to do, and you did not know what he was going to do?

A. No.

Mr. CAMPBELL.—The captain's testimony is that he relied upon the second mate as the go-between between these two men.

Mr. SUTRO.—I beg your pardon; that is not the captain's testimony.

Mr. CAMPBELL.—We will read it and see what it is.

The COURT.—You mean the master of the "Edith"?

Mr. SUTRO.—He says he relied on the captain of the tug after he cast his line off to take care of him. That is what [279] he said.

Mr. CAMPBELL.—We will read it to you and there will be no dispute.

Mr. SUTRO.—While you are looking that up we can go along, and when you have it you can read it.

Q. Now, Captain, getting back a minute to this 12-inch hawser, how many fathoms of pennant did you have on it? A. I had about 25.

Q. 25 fathoms of pennant? A. Yes.

Q. And that would be hauled up through the chocks. Is that what you call it? A. Yes.

Q. Is that an open space?

A. Yes, that is an open contrivance with two or

(Testimony of Emil A. Sandstrom.)

three different places for the line to lead through.

Q. What is the width, or diameter, rather, of one of these pennants? A. 1½ inch.

Q. What is the diameter of a 12-inch hawser?

A. You get pretty near it by figuring one-third of it; 4 inches.

Q. So that the thickness of the hawser, you say, is about 4 inches? A. About 4 inches.

Q. And the thickness of your pennant is about 1½ inches? A. 1½ inches.

Q. Now, the same chock through which you would pass that 4-inch hawser is also the chock through which you would pass the 1½-inch pennant, is it not?

A. Yes.

Q. There would not be very much friction, would there, in passing that 1½-inch pennant through the chock?

A. That depends on the height of the ship.

Q. There would not be nearly as much friction passing that through as there would be in passing this 12-inch hawser through, would there?

A. They could not get the 12-inch hawser through if [280] they tried without steam, not that amount of men.

Q. But, still, the 12-inch hawser is supposed to go through this chock, isn't it?

A. Well, not necessarily.

Q. But it would go through it, wouldn't it?

A. I suppose it would, yes.

Q. In other words, was not that chock amply big enough for the 1½-inch wire pennant to go through?

(Testimony of Emil A. Sandstrom.)

A. Yes.

Q. Plenty large enough; it was not a case of forcing it through? A. No.

The COURT.—I understood the captain's testimony with reference to friction to be not that the chock was so small that it would make friction on either side, but that the friction would be caused by the weight of the hawser on the lower edge of the chock.

Mr. SUTRO.—He said there would be too much friction to enable two or three men to pull it through.

The COURT.—I did not understand that in answer to that question that that was because they were trying to force a large hawser through a small opening, but because the weight of the hawser on the lower edge of the chock caused the friction.

Mr. SUTRO.—Your Honor understood him correctly; it is evident to me now; but I understood him to say there was too much friction, and thought he meant it would take a tremendous effort to force this wire pennant through the chock.

The COURT.—No.

Mr. SUTRO.—And yet the same chock will take an 8 or 10 or 12-inch hawser.

The WITNESS.—No.

Q. You mean the weight?

A. I mean the friction of the weight, hauling the wire up through that chock; naturally, you have to bend that wire on the chock, and the weight of it down in the lower [281] end would be too much for two or three men to haul that up.

(Testimony of Emil A. Sandstrom.)

Q. How many men do you think could haul it up?

A. I think about six men would be good.

Q. How many men were on the "Edith"?

A. That I don't know.

Q. There might have been six men there for all you know?

A. There might have been more; I don't know how many were there; but I know how many there were on the stern, that is all.

Q. We are talking about the bow, now, aren't we, Captain? Captain how high was the "Edith's" bow above the deck of the "Fearless," the forecastle? It has been testified to here that it was about—

Mr. CAMPBELL.—Let him testify.

A. From the house, or the deck?

Mr. SUTRO.—I am not surprised that you are a little sensitive about it.

Mr. CAMPBELL.—I am not sensitive about it in the least.

Mr. SUTRO.—About how high was the forecastle deck of the "Edith" above the deck of the tug?

A. Fully 20 feet.

Q. Would you say that was about right?

A. Possibly 23 feet—23 or 24 feet.

Q. Lloyd's register shows—will you take Lloyd's register figures as to the height of the forecastle?

Mr. CAMPBELL.—No, I will not.

Mr. SUTRO.—23 or 24 feet, you say? A. Yes.

Mr. CAMPBELL.—I don't think it gives that.

Mr. SUTRO.—They give the dimensions, the height of the ship.

(Testimony of Emil A. Sandstrom.)

Mr. CAMPBELL.—They give the moulded depth of the ship.

Mr. SUTRO.—How much draft did the “Edith” have that day?

A. She would draw very little, possibly 7 or 8 feet forward.

Mr. SUTRO.—The moulded depth of the “Edith” is given as [282] 25 feet 6 inches. Assuming that is the moulded depth of the “Edith,” how much would you allow for the forecastle?

Mr. CAMPBELL.—What do you mean by “moulded depth,” so that I can understand?

Mr. SUTRO.—As I understand it, the depth from the deck to the keel.

Mr. CAMPBELL.—Whereabouts?

Mr. SUTRO.—I am talking about the bow.

Mr. CAMPBELL.—The amidships section?

Mr. SUTRO.—These figures are taken for bow.

Mr. CAMPBELL.—I do not think so. How much sheer did that vessel have?

Mr. SUTRO.—If you will tell me what sheer means I will tell you.

Mr. CAMPBELL.—Go ahead, I won't interrupt you.

Mr. SUTRO.—Captain, as I understand you, you think that the forecastle deck was about 23 or 24 feet above the water? A. Above my deck.

Q. Above your deck? A. Yes.

Q. How high was your deck above the water?

A. About two feet.

Q. Any more?



(Testimony of Emil A. Sandstrom.)

A. A little more forward; a little less aft, possibly.

Q. How much more forward than aft?

A. Well, the sheer of the boat will be considerable; at the extreme bow of the boat it would be about 7 feet above water.

Q. You say that the deck of the "Fearless" was about two feet above the water?

A. Well, taking it about amidships; the after end of the house, it would be about two feet.

Q. So that the distance that this pennant would have to be hauled would be about 23 or 24 feet, you think? A. Yes, about that.

Q. That is only three feet more than we figure it, so it does [283] not make much difference. You say that the captain could have dropped his anchors at any time after he cleared the slips? A. Yes.

Q. As soon as you got into this position on his starboard side, where you asked him for a line, and from that time on until you got the line, you would not expect him would you—you would not expect to tow him with his anchors down, would you?

A. No, but he had no reason to tow with the anchor down.

Q. In that case, if he was expecting you to tow him, either gave you a line or got one from you, he would not drop his anchors, would he?

A. Well, he would drop his anchor before he got into trouble, wouldn't it?

Q. If he thought he was going to go into trouble, yes, I suppose he would; but if he expected you to either give him a line or if he expected to give you

(Testimony of Emil A. Sandstrom.)

one—in other words, if he expected to tow you, he wouldn't drop his anchors, would he?

Mr. CAMPBELL.—You are asking the captain to read the master's mind.

Mr. SUTRO.—I am asking him as a seaman.

A. I did not go there for him to tow me; I went to tow him.

Q. That is your answer to the question. Read the question.

(The last question repeated by the reporter.)

If he expected you to tow him; you are quite right; if he expected you to tow him, he would not drop his anchor, would he, as a good seaman?

A. Either that or give me a line—either drop an anchor or give me a line.

Q. Or get one from you?

A. Or get one from me; in either case it would have been better than to get in trouble.

Q. How long did it take you, Captain, to go around after the line had been cast off, to this position amidships of the "Edith"?

A. Possibly four minutes. [284]

Q. Four minutes? A. Three or four minutes.

Q. Three to four minutes? A. Yes.

Q. It took you three or four minutes to come from the stern of the "Edith" around on the starboard side until you were about amidships?

A. About that.

Q. Three or four minutes? A. Yes.

Q. In those three or four minutes she drifted from the position opposite Pier 44 to a position amidships

(Testimony of Emil A. Sandstrom.)

between 44 and 42? A. Yes.

Q. How long did it take her to drift to the position that you have marked here opposite Pier 34?

A. I didn't mark the time; I couldn't answer that.

Q. About how many feet do you think she drifted between the time that you left her stern and the time you got around to the starboard side?

A. She drifted pretty close to 1800 feet.

Q. You mean the entire time? A. Yes.

Q. But from the time that you left her stern until you got here amidships she only drifted 150 or 200 feet or so, didn't she? A. Something like that.

Q. That took four or five minutes?

A. About three or four minutes—not over four.

Q. Now, with these figures in mind, can you estimate the length of time that it took her to drift from the position between Piers 44 and 42 to this position at Pier 34?

A. I could not answer that; I don't know how long it took.

Q. It would take quite a long while, would it not?

A. I imagine I was there a long time.

Q. It must have been 20 minutes or half an hour?

A. No.

Q. It took her four minutes to drift from this position which I will mark "A" to the position "B."

A. You must remember a ship picks up way in drifting; she had not started, hardly, then. [285]

Q. So that it was because she picked up way that she started to drift faster: Is that it?

A. Drift faster, yes.

(Testimony of Emil A. Sandstrom.)

Q. When you cast off that stern line, you knew how much wind and tide there was, didn't you?

A. Yes, I knew.

Q. You knew that a ship drifting with that wind and tide would gather headway, didn't you?

A. Yes.

Q. And would keep drifting faster, and faster, and faster? A. Yes.

Q. And your idea, nevertheless, was to drop that line off the stern, run around and get one off the bow, and head her upstream?

A. My idea was to tow the ship further out; I would have towed her further out in the stream.

Q. How far would you have towed her out?

A. Possibly a thousand feet further; but when the captain stopped backing I came to the conclusion that he wanted me to let go; otherwise, he had no reason to stop backing; I could have kept on backing out into the stream.

Q. That was your judgment?

A. That was my idea of it.

Q. That was your idea of his conclusion?

A. Yes.

Q. Now if, in point of fact, his idea was that you should hang on to his stern, as he has testified, then your idea as to what he wanted was a mistaken idea: Was it not? A. It was confusion.

Mr. SUTRO.—That is all.

#### Redirect Examination.

Mr. CAMPBELL.—Q. How did the equipment which the "Fearless" had on this day compare with

(Testimony of Emil A. Sandstrom.)

the usual equipment carried on board the tugboats?

A. Well, it compared in every respect with whatever we used to carry on the tugboats.

Q. How did the "Sea King" compare in size with the "Fearless"? A. Exactly the same thing now.

Q. How did the "Sea King," I say, compare in size with the "Fearless"? A. The size? [286]

Q. Yes. A. Considerably.

Q. Which is the larger tug?

A. The "Sea King" is far the larger tug.

Q. What lines do you carry on the "Sea King"?

A. We carry the same lines, 4 7-inch lines, and at the present time I have got a spare one down below, new one.

Q. What is the largest sea-going tug that you have? A. The "Hercules."

Q. What lines does she carry?

A. She carries, I assume, the same lines; I could not swear to that.

Mr. CAMPBELL.—That is all.

Mr. SUTRO.—That is all.

Mr. CAMPBELL.—On that point I just want to read this testimony to the court. First I am reading from page 23 and then from page 30. This is cross-examination of the master of the ship, in a deposition taken in New York.

Mr. SUTRO.—I do not desire to interpose any objection to this, but I really think, in fairness to us, if those seven pages are going to be read—

Mr. CAMPBELL.—I am not going to read seven pages.



(Testimony of Emil A. Sandstrom.)

Mr. SUTRO.—I thought you said 23 to 30.

Mr. CAMPBELL.—No, on page 23 and page 30.

The question was: “Q. Who owns this vessel that you are on now, the ‘Helen’?”

A. The Bull Insular Line, A. H. Bull & Company, Agents.

Q. You, yourself, made the engagement for this tug, did you over the telephone? A. Yes.

Q. It was not intended that the tug should do anything but assist you into the dock?

A. That was my intention.

Q. You did not intend that she should haul you out of the slip at all did you? A. No.

Q. You did not think you required the tugboat to haul you out of the slip, did you?

A. I did not.” [287]

Then on page 29:

“Q. How much did the tug have out of that line, the second line?”

A. I should judge in the neighborhood of 30 fathoms, along there.

Q. Who gave the signal to the tug that time to go ahead?

A. That time, you know, she was on Pier 44 and I told him to go ahead, waved my hand to the third officer and told the towboat to go ahead.

Q. You simply waved your hand? A. Well—

Q. Did you see them reply from the tug to that waving of yours?

A. No I could not see the tug then, she was away astern of me. I could not see the captain, I could see the stack.

(Testimony of Emil A. Sandstrom.)

Q. Why didn't you have some signal system or whistle system?

A. Well, I would have to find out if the captain knew what I was whistling about.

Q. At any rate, you didn't arrange any signals?

A. No.

Q. You depended on passing word by the second officer? A. By the second officer.

Now, I want to offer in evidence, with counsel's consent, a record of the Beaufort scale as it is published in Lloyd's calendar.

Mr. SUTRO.—What is the purpose of this?

Mr. CAMPBELL.—The purpose is this that your master testified on his direct examination that the wind was blowing at a velocity No. 8 of the Beaufort scale, and I want to reduce that to miles, so that the Court may have the advantage of it.

Mr. SUTRO.—I suggest that you state what it is according to the Beaufort scale, and you need not introduce the book in evidence unless you want to.

Mr. CAMPBELL.—I do not intend to put the book in evidence. The Beaufort scale, as set forth in Lloyd's calendar, No. 8 is a 48-mile breeze. We have these ropes here if you want to put them in evidence.

Mr. SUTRO.—No.

Mr. CAMPBELL.—That is our case.

Mr. SUTRO.—That is our case. [288]

Argument of Oscar Sutro, Esq.

I am not going to argue to your Honor that a case of this sort should go off on the pleadings, but the first thing that I would like to bring to your Honor's

attention is the discrepancy on material points between the answer in this case and the theory of the case as it has developed by the claimant.

I am totally surprised by the theory that was developed in the evidence, that this line was pulled out of mate Kraatz's hands by the forward movement of the engines. There are three or four admissions, if they may be called such, although I take them merely to be statements of fact in the answer upon which we relied both for the preparation of this case, and in the examination of our witnesses; we took those facts for granted, and they are these; they are contained in the answer. First, that immediately that the line was cast off a signal was given by the mate to the captain to stop his engines; as he obviously would have to do if he was not going to foul his propeller.

Second: That the first officer asked for a 12-inch hawser that was lying in the tugboat, and did not get it.

Now, your Honor just heard the captain testify. The answer specifically admits that the hawser was asked for and was not furnished; we naturally did not prepare for any proof on that subject, and the reason—

Mr. CAMPBELL.—You took the depositions of the master and your second officer.

Mr. SUTRO.—We saw no occasion, Mr. Campbell, for taking the depositions on points which the pleadings specifically admitted. And it is specifically admitted *in haec verba* that the first officer asked for a

large 12-inch hawser which was lying in the tug. [289] Now, the length of time that elapsed during which that hawser could have been passed to the "Edith" was made apparent in the testimony here, particularly this afternoon. But, above all, the reason which is assigned in the answer why that hawser was not passed up is that it was not a suitable hawser for the purpose, and they say it was too heavy for the men to handle. Now then, your Honor heard the testimony both ways on that subject. One of the witnesses said—two of the witnesses said that it was a perfectly suitable hawser, and one of them said that it was a perfectly unsuitable hawser; but the answer was that the line was not suitable for that purpose, and that left us in the position that the tug had no line suitable for the operation which it undertook. But the principal and most misleading, if I may use that word without offense, averment of the answer, in the preparation or presentation at least of our case is that this line was cast off after the engines were started ahead. Now, the captain's deposition is perfectly consistent and clear that he undertook this maneuver; he intended to back out, he says; when he got out a distance which he estimated at 70 feet, or 30 or 40 or 50 feet, I forget just which, he stopped, he starboarded his helm and intended to return to the port; he was bound to; and he intended the tug not to let go but to hang on, and the tug, instead of hanging on, cast the line off after his engines were stopped. There was only one thing for him to do and that was to stop his engines, so that it would not foul the wheel, and he could not stop in time, your

Honor as the testimony here is that the wheel was fouled.

Now, these witnesses, some of them, state that the line was pulled out of the mate's hands; some of them state that he could not hold it because it was too heavy and one of them stated that the movement of the ship had nothing to do with it because the line was let [290] go after the wheel was started. The answer states that the wheel was started and the line was then cast off. Now, if that is true, and if that statement of the answer, which we submit has not been explained here and if we are entitled to that as an admission of fact in this case, then we submit that this tug was *prima facie* negligent because they had no right under their own testimony to cast off a stern line with a propeller turning in the water, particularly when that stern line came from the starboard side of the propeller was a right-hand wheel.

I did not offer your Honor any expert testimony in this case, although there was expert testimony at hand, for the reason that it seems to me a perfectly common sense fact which must be apparent to anyone, that if you drop a line over a moving propeller, you are going to foul that propeller.

Under the pleadings as they stand in this case and under the absolute conflict of testimony on the part of claimant's witnesses, taken in connection with the purposely consistent testimony on that point at least of our witnesses that this line was cast off after the wheel had started to turn, so that they immediately had to stop it and could not stop it in time, I submit we are entitled to a finding in this case that that wheel was fouled by reason of the fact that the



line was cast off after the wheel had started to turn forward.

It is entirely unnecessary for us to defend the propriety of the captain turning that wheel forward or turning his bow to the left. That was his funeral; if he chose to attempt to maneuver that way he took the responsibility for it. But certainly, whether the opinion of these experts who have taken the stand here—and they happen to be the manager, the superintendent, the assistant superintendent and one of the captains of the company—whether the testimony of those experts that this maneuver could or could [291] not be performed is correct certain it is and it cannot be contradicted that the maneuver unquestionably became impossible when the captain's wheel was fouled; and it was fouled because the captain of the tug took it upon himself to say that he should cast off the line because the captain of the "Edith" was going forward or had stopped his engines. It may be or it may not be, and I do not think it is necessary to a finding in this case that this maneuver could not have been performed. But we all know that if it could be performed in the absence of wind and tide, it could not be performed if a wheel was fouled. And they certainly fouled his wheel, because your Honor has their testimony. And I think the captain of the "Edith" is entitled to the benefit in this case of a finding that his wheel having been fouled, the maneuver became impossible, whether it was possible otherwise or not.

There is one more averment in the answer which is directly in the teeth of the testimony which the

claimants have produced and which I think we are entitled to the benefit of under these circumstances, and that is that the maneuver which was attempted was to pull the "Edith" out, drop the line, run around the bow, pick up her bow-line, and that it would have been successfully performed had a good line been passed. And they say that is the only way it could have been done. That is the averment of the answer.

Now, then, if your Honor please, we say at best it is a very hazardous and risky maneuver. The captain in his deposition testifies that he had nothing of that kind in mind. The captain of the "Fearless" says there was confusion; he had that maneuver in mind. If the captain of the "Fearless" undertook a maneuver without consulting the "Edith" as hazardous as that was, I respectfully submit he should have undertaken it fully equipped, fully [292] prepared and above all after consultation with the captain.

There is one decision that I have been able to find in the books that is so parallel to this case, and the language of it I think so apt, that I would like to call your Honor's attention to it at this time, even if we do file briefs; and I do not know that your Honor cares for them. It is the *M. A. Lennox*, 16 Fed. Cases, page 540, case 8987. That was a case where the "M. A. Lennox" undertook to tow the "Corsica." Now I can hear counsel say to your Honor the "Corsica" did not have her own power and consequently the case is not in point. But bear in mind if your Honor please this maneuver inevitably

contemplated that the "Edith" did get into a position where she would have no power; this maneuver contemplated dropping the stern-line, which meant stopping your engine, and from that moment the "Edith" was without power until the tug gets around here and picks her up. They say she should have backed and kept away from these piers, but that if your Honor please is emergency work. The maneuver itself meant, we will drop you her stern line, you will stop your engines, you will be without power and we will pick you up at your bow. That is just what they did in the "M. A. Lennox" case, or tried to do. It says here,—“she accordingly made fast to a hawser which was put out from the ship's quarter, and so hauled the ship out of the slip stern foremost. The ship was then towed a certain distance out into the river, stern foremost, and then the tug stopped, cast off the hawser, and attempted to get alongside of the ship, to take a second hawser from her starboard bow, in order to tow her upon her hawser to her place of destination.”

And on page 541:

“The sternway of the ship, and her distance out in the river at the time the hawser was cast off by the tug, proved to be such that, before the tug got hold of the ship by the [293] second hawser, and acquired headway, the tide, which runs up past the Brooklyn piers at that time and place, carried the ship upon one of the Brooklyn piers, known as Wetmore's dock, whereby her rudder was injured, and the damages sued for sustained.

It is manifest from this statement, that, whatever

other negligence there might have been on this occasion, it was negligence to take this large ship so far out into the river with the stern hawser, and that this negligence was a cause of the disaster which followed. Evidence has been introduced to show that the failure of the hands on the ship to promptly catch the heaving-lines which were thrown from the tug after the stern hawser was dropped, by means of which the second hawser was to be taken on board the tug, prevented the tug from getting hold of the ship by the bow hawser, in time to keep her off the piers; but if this be so, still it was negligence to take the ship so near to the Brooklyn side that a failure to catch the heaving-line at the first or second throw would result in her striking the piers."

"It was a manoeuvre not unattended with risk, but which could have been accomplished by the exercise of care and skill, and it manifestly required for its successful accomplishment that the stern hawser should be cast off at the earliest possible moment. But, instead of dropping the hawser as soon as the ship was clear of the New York piers, the tug kept towing until the ship was two-thirds of the way over to Brooklyn, and where the ordinary mishap of failing to catch a heaving-line resulted in placing her upon the Brooklyn piers. It was the duty of the master of the tug to determine the distance he would require for his manoeuvre, i. e., to stop, drop the stern hawser, turn his boat, and make fast to the bow-line.

Ordinary prudence required the hawser to be dropped at the earliest moment after the ship had



fairly cleared the New York [294] piers; and I find nothing in the evidence which justifies the tug in holding on, as she did, until the ship was in a position of danger; for a ship cannot be considered as otherwise than in danger when she is drifting towards piers, and so near as to require not only great diligence but good fortune to prevent her from striking. I hold the tug, therefore, to be responsible for lack of proper care in taking the ship so far out into the stream before she dropped the hawser. In arriving at this conclusion, I have not overlooked the defense which has been sought to be rested upon the evidence tending to show that the ship was being transported under the direction of her own master, and that, in point of fact, the master of the tug acted under the direction of the master of the ship in determining the distance out to which the ship was taken. A careful consideration of the testimony given by the various witnesses has convinced me that there was nothing in the action of the master of the ship, on this occasion, which can absolve the master of the tug from the responsibility of a negligent performance of the manoeuvre which he undertook. It is true that the master of the ship was on board the ship, and gave some orders in regard to the hauling of the ship as she was coming out of the dock, but I am satisfied of the correctness of the master's statement that he told the tug to drop hawser as soon as the ship was clear of the New York piers, and nothing occurred which would warrant the captain of the tug in supposing that the master of the ship had undertaken to say how far out the tug should



go before turning to take the bow-line, or had in any way made himself responsible for the nearness of his ship to the Brooklyn piers at the time the tug stopped towing. The manoeuvre of shifting the position of the tug from that of towing by the stern hawser to that of towing ahead was a manoeuvre which the [295] master of the tug knew he would be obliged to perform when he took hold of the stern-line. If not responsible for the mode of taking the ship out upon such a line, which was clearly improper, he is certainly responsible for any want of due care and skill displayed in making the necessary change of his position, and such want of care is shown in his taking the ship so far out into the stream before he stopped towing."

Now, I say that just as in that case, so here, when the master of the "Fearless" undertook this ticklish maneuver he undertook the responsibility of carrying it out. There is not any claim made by anybody, either on the libelant or the claimants' side that the master of the "Edith" had any such maneuver as this in mind. There is nothing of the kind anywhere in the record. The only mind that conceived this maneuver was the mind of the master of the "Fearless." It might have been a perfectly good maneuver—Captain Gray said it was a safe maneuver; he said it was as safe a maneuver as the other one would have been, of making a big turn. But the fact remains that the master of the "Fearless" undertook it, and he did not, in the language of the street, get away with it. Now, the maneuver which the master of the "Edith" wanted done they say

was an impossible one; and even if it was, when they said to him silently and in their own mind, we won't do what you want us to, because we don't think it can be done, we will do what we think should be done, from that moment, if their plan was the better plan, they assumed responsibility for the movement of that ship.

There is just one word more. I am not going to trespass upon your Honor's patience, although I could talk a long time about this case—I particularly ask your Honor to bear in mind, I not having had the opportunity to develop it by the presence of [296] witnesses in court, that the master takes the position and correctly so, that so far as he is concerned this disaster was caused by the casting off of this stern line at a time when he had not ordered it cast off; in other words, his wheel was fouled or he thought it was fouled, which was the same thing—because he had to act according to his judgment—and he stopped his wheel. And although afterwards, when he got opposite Pier 32, he proceeded up to Hunter's Point on his own steam, he did not know but what the next turn of his wheel would foul that rope; and he stopped it just as quick as he could; and it was only after the disaster had happened and he knew no further damage could happen, that he tried his engines and they worked. But how did they work? Your Honor has seen the model here that there were a dozen or three or four turns—I don't know how many turns—around the propeller, showing that he was justified in believing that his wheel was fouled; to all intents and purposes in his

mind his wheel was stopped, and drifted. They say, why didn't you cast your anchors? Well, he didn't cast any anchors because the tug was coming around asking him for a line, and he was entitled to assume that a line would be passed; and if he had dropped his anchor he would have killed that maneuver, and he very properly did not drop his anchor, and when he got down here, where the first emergency line that they could get hold of was passed out, when the line broke he could not cast his anchor because all the witnesses, even those that have been most hostile to us have agreed on this point, that he could not drop his anchor without smashing up against the piers. So there was no stage in this entire maneuver at which he could properly drop an anchor.

And the same holds true of reversing his engines. I think one of the witnesses said, although the captain of the "Fearless" [297] denies it—one of the witnesses says that the captain of the "Fearless" called out to the mate of the "Edith" to back his engines; he could not back his engines, one of the witnesses said—the captain of the "Edith" said he could not. Why couldn't he? Because in his mind his wheel was fouled; and the only thing therefore that he could do of his own volition, he was blocked from doing by the dropping of that line at a time when he had not ordered it to be dropped, and he had to rely on the tug to render him the assistance. And I say if your Honor please, that any tug proposing to take a vessel out of a slip, to drop her stern line, to run around her bow, and pick up her bow line, which neither tells the master of the

vessel that it is going to do that, nor is prepared itself to do so, because it has no suitable line, is guilty, I respectfully submit of the grossest negligence. If he had a line of his own he should have used it, and if he did not have one he should have told the master to get one ready.

[Endorsed]: Filed Jun. 7, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [298]

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*In the Southern Division of the United States District Court, for the Northern District of California, First Division.*

No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent.

**(Order that Decree be Entered in Favor of Libelant,  
and Referring Cause to U. S. Commissioner to  
Ascertain Damage.)**

MEMORANDUM.

Lacking the time to prepare an opinion in this case, I can only state my conclusions from the testimony as follows:

1. The master of the "Fearless" was at fault in not consulting with the master of the "Edith" as to

the maneuvers intended by him before he undertook to execute them.

2. He was also at fault in casting off the line without warning and while the "Edith's" wheels were turning.

3. To these faults the accident was due.

4. The "Fearless" should have passed to the "Edith," after letting go of her and while she was drifting, a line of sufficient strength to hold her, and should have been prepared to do so. This was not done.

5. The "Edith" was not at fault for not dropping her anchor, as she was entitled to believe that the "Fearless" would care for her properly.

A decree will be entered fixing the responsibility of the "Fearless," and referring the cause to the Master to ascertain and report the amount of damage suffered by the "Edith."

M. T. DOOLING, Judge.

[Endorsed]: Filed Feb. 8, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [299]

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In the Southern Division of the District Court of the United States, for the Northern District of California, First Division. In Admiralty. Held at the Courtroom Thereof in the United States Postoffice Building, in the City and County of San Francisco, State of California, on February 8, 1918. Present: Hon. M. T. DOOLING, District Judge.



No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS & MERCHANTS' TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Interlocutory Decree.**

The above-entitled cause having been heard on the pleadings and proofs, and argued and submitted by the proctors for the respective parties, and due deliberation having been had in the premises, and the Court having found that the injury and damage to libelant's vessel, the "Edith," was due to the fault of The American Steamtug "Fearless," the respondent herein, and that there was no fault on the part of the libelant's vessel the "Edith":

It is now ORDERED, ADJUDGED AND DECREED by the Court that the libelant above named do have and recover from The American Steamtug "Fearless," her boilers, engines, tackle, apparel and furniture, the entire damage sustained by the said libelant by reason of the matters and things set forth in the libel on file in the cause above named, together with interest and costs herein.

It is further ORDERED that the said cause be referred to Francis Krull, United States Commissioner, to take testimony and ascertain the amount of said damage, and report the same to this Court with all convenient speed. [300]

Dated: February 13, 1918.

M. T. DOOLING,  
Judge of Said Court.

[Endorsed]: Filed Feb. 13, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in vol. 7, Judg. and Decrees at page 478.  
[301]

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*In the Southern Division of the United States District Court, for the Northern District of California, First Division.*

IN ADMIRALTY—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS & MERCHANTS' TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Stipulation as to Damages.**

The interlocutory decree herein having ordered

that the case be referred to Francis Krull, United States Commissioner, to take testimony and ascertain the amount of the damage sustained by the libelant and report the same to the Court, but the parties hereto being agreed upon said damage;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the damage sustained by the libelant by reason of the matters and things set forth in the libel on file herein is the sum of twenty-one thousand seven hundred and forty-seven and 96/100 (21,747.96) dollars with interest at the rate of six (6) per cent. per annum from May 18, 1916.

OSCAR SUTRO,  
PILLSBURY, MADISON & SUTRO,  
Proctors for Libelant.

IRA A. CAMPBELL,  
McCUTCHEM, OLNEY & WILLARD,  
Proctors for Respondent and Claimant.

Let it be filed.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Mar. 25, 1918, W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [302]

In the Southern Division of the District Court of the United States, for the Northern District of California, First Division. In Admiralty. Held at the Courtroom Thereof in the United States Postoffice Building, in the City and County of San Francisco, State of California, on March 28th, 1918. Present: Hon. M. T. DOOLING, District Judge.

No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS & MERCHANTS' TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Final Decree.**

An interlocutory decree having been heretofore on the 13th day of February, 1918, signed and filed in the above-entitled cause, wherein it was adjudged that the injury and damage to libelant's vessel, the "Edith," was due to the fault of the American Steamtug "Fearless," the respondent herein, and that there was no fault on the part of the libelant's vessel, the "Edith," and whereby it was ordered that said cause be referred to Francis Krull, United

States Commissioner, to take testimony and ascertain the amount of said damage;

And the proctors for the respective parties to said cause subsequent to the signing and filing of said interlocutory decree, having entered into a stipulation as to the amount of said damages, as follows, to wit:

“The interlocutory decree herein having ordered that the cause be referred to Francis Krull, United States Commissioner, to take testimony and ascertain the amount of the damage sustained by the libelant and report the same to the court, but the parties hereto being agreed upon said damage; [303]

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the damage sustained by the libelant by reason of the matters and things set forth in the libel on file herein is the sum of twenty-one thousand seven hundred and forty-seven and 96/100 (21,747.96) dollars with interest at the rate of six (6) per cent per annum from May 18, 1916.”

And it appearing that the American Steam Tug “Fearless,” her engines, boilers, tackle, apparel and furniture, respondent herein, was released by the claimant above named from the custody of the Marshal upon a stipulation for value.

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED that A. H. Bull & Company, Inc., a corporation, libelant, do have and recover from the American Steam Tug “Fearless,”



her engines, boilers, tackle, apparel and furniture, the sum of twenty-one thousand seven hundred and forty-seven and 96/100 dollars (\$21,747.96), together with interest at the rate of six (6) per cent per annum from May 18, 1916, until paid, and costs as taxed.

And it is further ORDERED, ADJUDGED AND DECREED that unless this decree be satisfied or proceedings thereon, including execution, be stayed on appeal, within the time and in the manner prescribed by the rules and practice of this Court, the stipulators for costs and value, on the part of the respondent vessel, cause the engagements of their stipulations to be performed or show cause within the time prescribed by law why execution should not issue against them to satisfy this decree.

Dated March 28th, 1918.

M. T. DOOLING,  
Judge.

Receipt of a copy of final decree is hereby admitted this 21st day of March, 1918.

IRA A. CAMPBELL,  
McCUTCHEM, OLNEY & WILLARD,  
Proctors for Claimant.

[Endorsed]: Filed Mar. 28, 1918. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [304]

*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

IN ADMIRALTY—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS & MERCHANTS' TUGBOAT  
COMPANY, a Corporation,  
Claimant.

**Notice of Appeal.**

To the Clerk of the Above-entitled Court, to the Libelant Above-named, and to Messrs. Pillsbury, Madison & Sutro and Oscar Sutro, Esq., Proctors for Said Libelant:

You and each of you will please hereby take notice that Shipowners and Merchants' Tugboat Company, a corporation, claimant above named, hereby appeals from the final decree made and entered herein in this cause on the 28th day of March, 1918, to the next United States Circuit Court of Appeals for the Ninth Circuit to be holden in and for the said circuit at the City and County of San Francisco, State of California.

Dated: April 6, 1918.

IRA S. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant.

Receipt of a copy is hereby admitted this 6th day of April, 1918.

PILLSBURY, MADISON & SUTRO,

Proctors for Libelant.

[Endorsed]: Filed Apr. 8, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [305]

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*In the Southern Division of the United States District Court, for the Northern District of California, First Division, in Admiralty.*

No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS & MERCHANTS' TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Assignments of Error.**

Comes now Shipowners and Merchants' Tugboat Company, a corporation, claimant and appellant herein, and contends that in the record, opinion

(memorandum of conclusions), decision and final decree in this cause there is manifest and material error, and said appellant now makes, files and presents the following assignments of error on which it relies, to wit:

(1) That the District Court erred in rendering and entering the interlocutory decree herein dated February 13, 1918.

(2) That the District Court erred in rendering and entering the final decree herein dated March 28, 1918.

(3) That the District Court erred in not dismissing the libel herein with costs to claimant as prayed for in claimant's answer and in not granting to claimant a decree of dismissal herein with its costs as so prayed for. [306]

(4) That the District Court erred in holding, deciding and decreeing that the injury and damage to libelant's vessel, the "Edith," was due to the fault of the American Steamtug "Fearless," the respondent herein, and that there was no fault on the part of the libelant's vessel, the "Edith."

(5) That the District Court erred in not holding, deciding and decreeing that the collision of libelant's vessel, the "Edith," with Pier 32 and the injury and damage to libelant's said vessel were solely due to the fault and negligence of libelant and its said vessel.

(6) That the District Court erred in not holding, deciding and decreeing that the collision of libelant's vessel, the "Edith," with said Pier 32 and the injury and damage to libelant's vessel, if due

to the fault and negligence of the "Fearless," were, nevertheless, proximately due to the contributory negligence of the "Edith."

(7) That the District Court erred in holding and deciding that the master of the "Fearless" was at fault in not consulting with the master of the "Edith" as to the maneuvers intended by him before he undertook to execute them.

(8) That the District Court erred in holding and deciding that the master of the "Fearless" was at fault in casting off the line without warning and while the "Edith's" wheels were turning.

(9) That the District Court erred in holding, deciding and finding that the master of the "Fearless" cast off the line without warning and while the "Edith's" wheels were turning. [307]

(10) That the District Court erred in holding and deciding that the accident was due to the alleged faults of the master of the "Fearless" in not consulting with the master of the "Edith" as to the maneuvers intended by him before he undertook to execute them and in casting off the line without warning and while the "Edith's" wheels were turning.

(11) That the District Court erred in holding and deciding that the "Fearless" should have passed to the "Edith," after letting go of her and while she was drifting, a line of sufficient strength to hold her and should have been prepared to do so; and in holding and deciding that there was any duty upon the part of the "Fearless" to pass a line to the "Edith" at all.



(12) That the District Court erred in holding and deciding that the "Edith" was not in fault for not dropping her anchor.

(13) That the District Court erred in holding and deciding that the "Edith" was entitled to believe that the "Fearless" would care for her without cooperation from the "Edith" by the latter's dropping her anchor.

(14) That the District Court erred in holding and deciding that a decree should be entered fixing the responsibility of the "Fearless" for the accident and in not holding and deciding that a decree should be entered fixing the responsibility of the "Edith" for the accident and dismissing the libel accordingly.

(15) The District Court erred in not holding and deciding that if there was negligence and fault upon the part of the "Fearless," nevertheless, there was contributory negligence on the part of the "Edith" proximately causing said accident and the injury and damage to the "Edith" flowing therefrom. [308]

(16) That the District Court erred in not holding, deciding and decreeing that said accident and the injury and damage to the "Edith" were due to the failure of the master of the "Edith" to anchor her on "thinking" his steamer disabled by the line in her wheel.

(17) That the District Court erred in not holding, deciding and decreeing that said accident and the injury and damage to the "Edith" were due to the failure of the first mate of the "Edith" to pass

promptly a good line to the "Fearless" when she was drifting toward Pier 32.

(18) That the District Court erred in not holding, deciding and decreeing that the said accident and the injury and damage to the "Edith" were due to the failure of the master of the "Edith" to go astern on the "Edith's" engines instead of allowing her to drift so close to Pier 32 before backing that she could not get away from it before colliding.

(19) That the District Court erred in not holding, deciding and decreeing that the safe and proper way for the "Edith" to get to Hunter's Point under the conditions of wind and tide then prevailing was for her (after backing out from Pier 44, aided from the stern as she was by the "Fearless," and after getting well into the stream) to take in her line and then go ahead under her own power under a port helm, so that she would be headed northward with the wind and tide, and then to make a half circle easterly toward the south, so as to take her course in a general southerly direction toward Hunter's Point; and in not holding, deciding and decreeing that it was negligence on the part of the master of said "Edith" to go ahead on her propeller, as she did, without first taking in her line, [309] and, also, that it was negligence on her part, when she did go ahead on her propeller, to do so, as she did, under a starboard instead of under a port helm, thus making it necessary for the "Fearless" to attempt the difficult maneuver of circling around the "Edith's" stern and coming up under her bow and attempting to get a line from her bow so as to pull

her into the wind and tide and thus head her southward toward Hunter's Point; and in not holding, deciding and decreeing that the accident and the resulting injury and damage to the "Edith" were due to the negligence and fault of the "Edith" herself in compelling the "Fearless" to undertake said difficult maneuver when the safer course would have been that first outlined above.

(20) The District Court erred in not holding, deciding and decreeing that the "Edith" had her own power, that this was an "assist" and not a "towage" and that the duties and responsibilities of the "Fearless" were those of an assisting and not of a towing vessel.

(21) That the District Court erred in not holding, deciding and decreeing that the stopping of the propeller of the "Edith" was a signal to the "Fearless" to cast off the line.

(22) That the District Court erred in not holding, deciding and decreeing that the line was not taken off the bitts on the "Fearless" until the "Edith" had stopped her propeller, thereby indicating to the "Fearless" that said line was to be cast off.

(23) That the District Court erred in not holding, deciding and decreeing that the "Edith" was negligent in moving her propeller before taking in the line after it had been cast [310] off by the "Fearless" in response to the request that it be so cast off as conveyed to the "Fearless" by the stopping of the propeller of the "Edith."

(24) That the District Court erred in not hold-

ing, deciding and decreeing that the fouling of the "Edith's" propeller by the line, if there was such fouling, was due to the negligence and fault of the "Edith" in moving her propeller before the line had been taken in.

(25) That the District Court erred in not holding, deciding and decreeing that the line if wrapped round the "Edith's" propeller did not, nevertheless, interfere with the movement of said propeller.

(26) That the District Court erred in not holding, deciding and decreeing that there was no evidence to show that the line which was found on the "Edith's" propeller when she was docked at Hunter's Point fouled said propeller during the maneuver and was not there prior to the "Edith's" leaving her dock.

(27) That the District Court erred in not holding, deciding and decreeing that it was the duty of the "Edith" and not the duty of the "Fearless" to furnish the lines and all the lines required in the maneuver.

In order that the foregoing assignments of error may be and appear of record, said appellant files and presents the same and prays that such disposition be made thereof as shall be in accordance with the law and the statutes of the United States in such cases made and provided; and said appellant prays that the decree hertofore made and entered herein and appealed from may be reversed.

McCUTCHEM, OLNEY, & WILLARD,

Proctors for Appellant.

[Endorsed]: Copy received of the within Assignment of Errors and receipt of a copy is hereby admitted this 26th day of June, 1918. Pillsbury, Madison and Sutro, Proctors for Libelant. Filed Jun. 26, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [311]

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*In the Southern Division of the United States District Court, for the Northern District of California, First Division.*

IN ADMIRALTY—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Boilers, Engines, Tackle, Apparel and  
Furniture,

Respondent,

SHIPOWNERS AND MERCHANTS' TUGBOAT  
COMPANY, a Corporation,

Claimant.

**Cost Bond on Appeal and Staying Execution.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Shipowners and Merchants' Tugboat Company, a corporation organized and existing under and by virtue of the laws of the State of California, claimant above named, as principal, and W. J. Gray and John W. Curry, of the city and county of San Francisco, State of California, and city of Oakland,



county of Alameda, State of California, respectively, as sureties, are held and firmly bound unto A. H. Bull & Company, Inc., a corporation, libelant herein, in the sum of two hundred and fifty (250) dollars, and in the further sum of twenty-five hundred (2500) dollars, to be paid unto said libelant, for the payment of which well and truly to be made, we bind ourselves, and each of us, our, and each of our, respective successors, heirs, executors and administrators, jointly and [312] severally firmly by these presents.

Sealed with our seals and dated this 6th day of April, 1918.

WHEREAS, Shipowners and Merchants' Tugboat Company, a corporation, claimant above named, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the United States District Court in and for the Southern Division of the Northern District of California, made and entered herein on the 28th day of March, 1918, ordering that said libelant do have and recover from the American Steam Tug "Fearless," respondent herein, the sum of \$21,747.96, together with interest at the rate of six (6) per cent per annum from May 18, 1916, until paid and costs as taxed, and that, unless said decree should be satisfied or proceedings thereon, including execution, be stayed on appeal within the time and in the manner prescribed by the rules and practice of this Court, the stipulators for costs and value on the part of said respondent vessel should cause the engagements of their stipulations to be performed or show cause within the time pre-

scribed by law why execution should not issue against them to satisfy said decree; and,

WHEREAS, said claimant desires during the process of such appeal to stay the execution of the said decree of said United States District Court;

NOW, THEREFORE, the condition of this obligation is such that if said Shipowners and Merchants' Tugboat Company, a corporation, shall prosecute said appeal with effect and pay all costs that may be awarded against it as appellant, if the appeal be not sustained, and shall abide by and perform whatever decree may be entered against it in this cause by the United States Circuit Court of Appeals for the Ninth Circuit, [313] or on the mandate of said court by the said District Court below, then this obligation to be void; otherwise the same to be and remain in full force and effect.

SHIPOWNERS AND MERCHANTS'  
TUGBOAT COMPANY,

By W. J. GRAY,  
Its Vice-president.

(As Principal),

W. J. GRAY,

JOHN W. CURRY,

(As Sureties.)

(To be Acknowledged Before a Notary Public.)

State of California,

City and County of San Francisco,—ss.

On this 6th day of April, in the year one thousand nine hundred and eighteen, before me, M. I. Lawrence, a Notary Public in and for the said city and county of San Francisco, residing therein, duly com-

missioned and sworn, personally appeared W. J. Gray, known to me to be the vice-president of the Shipowners and Merchants' Tugboat Company, the Corporation described in and that executed the within and annexed instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written..

[Seal]

M. I. LAWRENCE,

Notary Public, in and for the City and County of San Francisco, State of California.

My Commission Expires January 27, 1922. [314]

State of California,

City and County of San Francisco,—ss.

On this 6th day of April, in the year one thousand nine hundred and eighteen, before me, M. I. Lawrence, a Notary Public in and for the said city and county of San Francisco, residing therein, duly commissioned and sworn, personally appeared W. J. Gray and John W. Curry, known to me to be the persons described in, whose names are subscribed to and who executed the within and annexed instrument, and they severally acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and

year in this certificate first above written.

[Seal]

M. I. LAWRENCE,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires January 27, 1922. [315]

State of California,

City and County of San Francisco,—ss.

W. J. Gray and John W. Curry, being severally duly sworn, each deposes and says:

That he resides in the State and Northern District of California and that he is worth double the amount of the foregoing bond over and above all his just debts and liabilities.

W. J. GRAY,

JOHN W. CURRY.

Subscribed and sworn to before me this 6th day of April, A. D. 1918.

M. I. LAWRENCE,

Notary Public in and for the City and County of San Francisco, State of California.

The foregoing cost and supersedeas bond is hereby approved as to form, amount and sufficiency of surety this 6th day of April, 1918.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Proctors for Libelant.

The foregoing cost and supersedeas bond is hereby allowed and approved this 6th day of April, 1918, and the same may operate as a stay of execution in said cause pending the determination of said appeal.

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Judge.

[Endorsed]: Service of the within Bond and receipt of a copy is hereby admitted this 6th day of April, 1918. Filed Apr. 6, 1918. W. B. Maling, Clerk. C. W. Calbreath, Deputy Clerk.

OSCAR SUTRO,  
PILLSBURY, MADISON & SUTRO,  
Proctors for Libelant. [316]

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*In the Southern Division of the United States District Court, for the Northern District of California, First Division.*

IN ADMIRALTY—No. 16,031.

A. H. BULL & COMPANY, INC., a Corporation,  
Libelant,

vs.

THE AMERICAN STEAM TUG "FEARLESS,"  
Her Engines, Boilers, etc.,  
Respondent,

SHIPOWNERS AND MERCHANTS' TUGBOAT  
COMPANY, a Corporation,  
Claimant.

**Stipulation and Order Regarding Original Exhibits  
on Appeal.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that all exhibits introduced in evidence upon the trial of the above-entitled cause in the District Court may be sent up in connection with the appeal prosecuted herein as original exhibits to the Circuit Court of



Appeals for the Ninth Circuit instead of being copied in the Apostles on Appeal.

PILLSBURY, MADISON AND SUTRO,  
Proctors for Libelant.

McCUTCHEM, OLNEY & WILLARD,  
Proctors for Claimant and Respondent.

It is so ordered:

FRANK S. DIETRICH,  
U. S. District Judge.

Dated August 14th, 1918.

[Endorsed]: Filed Aug. 14, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [317]

**Certificate of Clerk, U. S. District Court, to Apostles on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing 317 pages, numbered from 1 to 317, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of A. H. Bull & Company, Inc., vs. The American Steam-Tug "Fearless," etc., No. 16,031, as the same now remain on file and of record in the office of the Clerk of said District Court; said transcript having been prepared pursuant to and in accordance with the "Praecipe for Apostles on Appeal" (copy of which is embodied in these Apostles) and the instructions of the Proctors for Respondent and Claimant herein.

I further certify that the cost for preparing and certifying the foregoing Apostles on Appeal is the sum of One Hundred Twenty-two Dollars and

Twenty-five Cents (\$122.25) and that the same has been paid to me by the Proctors for the Appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 20th day of August, A. D., 1918.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. TAYLOR,

Deputy Clerk. [318]

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[Endorsed]: No. 3199. United States Circuit Court of Appeals for the Ninth Circuit. Ship-owners and Merchants' Tugboat Company, a Corporation, Claimant of the American Steam Tug "Fearless," Her Boilers, Engines, Tackle, Apparel and Furniture, Appellant, vs. A. H. Bull & Company, Inc., a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Divison.

Filed August 20, 1918.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 3199,

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation, Owner of the  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellant,

vs.

A. H. BULL & COMPANY, INC.,

Appellee.

**Notice of Filing Apostles and Docketing Cause.**

To A. H. BULL & COMPANY, INC., and to Messrs.  
Pillsbury, Madison & Sutro, Its Proctors:

You and each of you will please take notice that  
on the 20th day of August, 1918, the apostles on ap-  
peal in the above-entitled action were filed and the  
cause docketed in the United States Circuit Court of  
Appeals for the Ninth Circuit.

Dated Aug. 23, 1918.

McCUTCHEM, OLNEY & WILLARD,  
Proctors for Appellant.

Service of the within notice of filing apostles and  
docketing cause and receipt of a copy is hereby ad-  
mitted this 23d day of August, 1918.

PILLSBURY, MADISON & SUTRO,  
Proctors for Appellee.

[Endorsed]: No. 3199. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Ship-owners & Merchants Tugboat Company, etc., Appellant, vs. A. H. Bull & Company, Inc., Appellee. Notice of Filing Apostles and Docketing Cause. Filed Aug. 23, 1918. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation, Owners of the  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellants.

vs.

A. H. BULL & COMPANY, INC., a Corporation,  
Appellee.

**Stipulation and Order Extending Time to June 4,  
1918, for Docketing Cause on Appeal.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the time for printing the record and fil-  
ing and docketing this cause on appeal in the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit may be, and the same is hereby, extended to and  
including the 4th day of June, 1918.

Dated May 3, 1918.

PILLSBURY, MADISON & SUTRO,  
Proctors for Appellee.  
IRA A. CAMPBELL,  
McCUTCHEM, OLNEY & WILLARD,  
Proctors for Appellant.

It is so ordered.

WM. H. HUNT,  
Circuit Judge.

Dated May —, 1918.

[Endorsed]: No. —. In the United States Circuit Court of Appeals, for the Ninth Circuit. Shipowners & Merchants Tugboat Company, a Corporation, etc., Appellants, vs. A. H. Bull & Company, Inc., a Corporation, Appellee. Stipulation and Order Extending Time for Docketing Cause on Appeal. Filed May 3, 1918. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation, Owner of the  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellants.

vs.

A. H. BULL & COMPANY, INC., a Corporation,  
Appellee.



**Stipulation and Order Extending Time to June 14,  
1918, for Docketing Cause on Appeal.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby, extended to and including the 14th day of June, 1918.

Dated June 3, 1918.

PILLSBURY, MADISON & SUTRO,  
Proctors for Appellee.  
McCUTCHEEN, OLNEY & WILLARD,  
Proctors for Appellant.

It is so ordered.

WM. H. HUNT,  
Circuit Judge.

Dated June 3, 1918.

[Endorsed]: No. ——. United States Circuit Court of Appeals, for the Ninth Circuit. Ship-owners & Merchants Tugboat Company, a Corporation, Owner of the American Steam Tug "Fearless," Her Boilers, etc., Appellants, vs. A. H. Bull & Company, Inc., a Corporation, Appellee. Stipulation and Order Extending Time for Docketing Cause on Appeal. Filed Jun. 3, 1918. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation, Owner of the  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellant,

vs.

A. H. BULL & COMPANY, INC., a Corporation,  
Appellee.

**Stipulation and Order Extending Time to July 1,  
1918, for Docketing Cause on Appeal.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the time for printing the record and filing  
and docketing this cause on appeal in the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit may be, and the same is hereby, extended to and  
including the 1st day of July, 1918.

Dated June 13th, 1918.

McCUTCHEEN, OLNEY & WILLARD,  
Proctors for Appellant.

PILLSBURY, MADISON & SUTRO,  
Proctors for Appellee.

It is so ordered.

WM. W. MORROW,  
Circuit Judge.

Dated June 14, 1918.

[Endorsed]: No. ——. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Ship-owners and Merchants Tugboat Company, a Corporation, Owner of the American Steam Tug "Fearless," etc., Appellant, vs. A. H. Bull & Company, Inc., Appellee. Stipulation and Order Extending Time for Docketing Cause on Appeal. Filed Jun. 14, 1918. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation, Owner of the  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellant,

vs.

A. H. BULL & COMPANY, INC., a Corporation,  
Appellee.

**Stipulation and Order Extending Time to August 1,  
1918, for Docketing Cause on Appeal.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the time for printing the record and fil-  
ing and docketing this cause on appeal in the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit may be, and the same is hereby, extended to and  
including the 1st day of August, 1918.

Dated June 28, 1918.

McCUTCHEM, OLNEY & WILLARD,  
Proctors for Appellant.  
PILLSBURY, MADISON & SUTRO,  
Proctors for Appellee.

It is so ordered.

WM. H. HUNT,  
Circuit Judge.

Dated July —, 1918.

[Endorsed]: No. —. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Shipowners & Merchants Tugboat Company, a Corporation, etc., Appellant, vs. A. H. Bull & Company, Inc., a Corporation, Appellee. Stipulation and Order Extending Time for Docketing Cause on Appeal. Filed Jul. 1, 1918. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation, Owner of the  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellant,

vs.

A. H. BULL & COMPANY, INC., a Corporation,  
Appellee.

**Stipulation and Order Extending Time to August 15,  
1918, for Docketing Cause on Appeal.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby, extended to and including the 15th day of August, 1918.

Dated July 31, 1918.

McCUTCHEM, OLNEY & WILLARD,  
Proctors for Appellant.  
PILLSBURY, MADISON & SUTRO,  
Proctors for Appellee.

It is so ordered.

WM. H. HUNT.  
JEREMIAH NETERER,  
District Judge.

Dated 7/31, 1918.

[Endorsed]: No. ——. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Ship-owners & Merchants Tugboat Company, etc., Appellant, vs. A. H. Bull & Company, Inc., Appellee. Stipulation and Order Extending Time for Docketing Cause on Appeal. Filed Jul. 31, 1918. F. D. Monckton, Clerk.



*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

SHIPOWNERS & MERCHANTS TUGBOAT  
COMPANY, a Corporation, Owner of the  
American Steam Tug "FEARLESS," Her  
Boilers, Engines, Tackle, Apparel and Furni-  
ture,

Appellant,

vs.

A. H. BULL & COMPANY, INC.,

Appellee.

**Stipulation and Order Extending Time to August 22,  
1918, for Docketing Cause on Appeal.**

IT IS HEREBY STIPULATED AND  
AGREED by and between the respective parties  
hereto that the time for printing the record and fil-  
ing and docketing this cause on appeal in the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit may be, and the same is, hereby extended to and  
including the 22d day of August, 1918.

Dated August 14, 1918.

McCUTCHEN, OLNEY & WILLARD,  
Proctors for Appellant.

PILLSBURY, MADISON & SUTRO,  
Proctors for Appellee.

It is so ordered.

WM. H. HUNT,  
Circuit Judge.

Dated August 15th, 1918.

[Endorsed]: No. —. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Ship-owners & Merchants Tugboat Company, a Corporation, Owner of the American Steam Tug "Fearless," Her Boilers, Engines, Tackle, Apparel and Furniture, Appellant, vs. A. H. Bull & Company, Inc., Appellee. Stipulation and Order Extending Time for Docketing Cause on Appeal. Filed Aug. 15, 1918. F. D. Monckton, Clerk.

[Endorsed]: No. 3199. United States Circuit Court of Appeals for the Ninth Circuit. Six Orders Under Rule 16 Enlarging Time to Aug. 22, 1918, to File Record Thereof and to Docket Cause. Re-filed Aug. 20, 1918. F. D. Monckton, Clerk.